Supreme Court of the United States

OCTOBER TERM, 1969

No. 1198

EDGAR D. WHITCOMB, Governor of the State of Indiana
Appellant,

—v.—

PATRICK CHAVIS, et al.

Appeal From The United States District Court For The Southern District of Indiana, Indianapolis Division

DOCKETED FEBRUARY 18, 1970

PROBABLE JURISDICTION NOTED MARCH 23, 1970

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RELEVANT DOCKET ENTRIES

Plaintiffs' Complaint Against The Indiana General Assembly And Its Individual Members Was Filed On January 9, 1969.

Plaintiffs' Request For Admissions Was Filed On February 4, 1969.

Plaintiffs' Motion To Join Edgar D. Whitcomb, As Governor Of The State of Indiana, Was Granted On March 18, 1969.

Defendants' Motion To Dismiss As To The Indiana General Assembly And Its Individual Members Was Granted On May 12, 1969.

Petition Of Certain Parties For Leave To Intervene Nunc Pro Tunc As Defendants Was Made On June 12, 1969.

Petition To Intervene As Defendants Granted On June 17, 1969.

District Court Determined That This Was Not A Class Action As Stated In The Complaint But Allowed Plaintiffs To Maintain The Action Individually On June 17, 1969.

Trial Begun And Evidence Heard On June 17, 1969.

District Court's Order And Opinion Declaring The Multi-Member Districting Provisions Of The Indiana Apportionment Act Of 1965, As They Related To Marion County, Unconstitutional Was Issued On July 28, 1969.

The District Court's Plan and Order For Reapportionment Of The Legislative Seats In The General Assembly Of Indiana Was Issued On December 15, 1969.

Appellant's Application For A Stay Of The District Court's Order Of December 15, 1969, Was Granted By The Supreme Court Of The United States On February 2, 1970.

Appellees' Motion To Vacate The Stay Was Denied By The Supreme Court Of The United States On February 6, 1970.

The Supreme Court Of The United States Noted Probable Jurisdiction In Nos. 735, 761, and 1198, On March 16, 1970.

The Order Of March 16, 1970, Was Revoked By The Supreme Court Of The United States And Probable Jurisdiction Was Noted In No. 1198, Only, On March 23, 1970.

Supreme Court of the United States

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK CHAVIS, et al., *Plaintiffs* vs. EDGAR D. WHITCOMB, Governor of the State of Indiana *Defendant*	NO. IP 69-C-23

January 9, 1969

COMPLAINT CIVIL ACTION

I

NATURE OF THE ACTION

This is a class-action suit and the classes hereinafter are described and specified. This suit is in the nature of a civil rights action in equity attacking the constitutionality of two statutes of the State of Indiana which provide for multi-member districting at large of General Assembly seats in Marion County, Indiana and it is brought against the legislative body having control over the nature and content of the said statutes. In view of the fact that the constitutionality of two Indiana statutes are under attack, a three-judge court is suggested.

JURISDICTION

The jurisdiction of this Court to hear and adjudicate this complaint arises under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and the First Amendment to the said Constitution and under the laws of the United States, and in particular, Title 28, United States Code, Section 1343 and Title 42, United States Code, Sections 1981, 1982, 1983, 1986, 1989 and 1990. (Memorandum 1 is attached to this complaint in support of this jurisdictional statement.) (Other memoranda also are attached hereto. These are cited hereinafter simply by showing their number in parentheses, eg. (1)

II

PARTIES

PLAINTIFFS

A. Patrick Chavis who is hereinafter referred to as plaintiff (A) is a resident and voter of the State of Indiana and he is a negro. Plaintiff (A) lives outside the hereinafter described Ghetto Area and he lives in an area where his respective minority group, negroes, are unlikely to ever gather in sufficient number to be able to exercise a voting bloc influence over the election of any candidate to any public office. Plaintiff (A), therefore, has an active and legitimate interest in suing to protect the voting rights of the inhabitants of the hereafter described Ghetto Area whose interests and voting propensities are similar if not identical to his own. Plaintiff (A) sues on his own behalf and on behalf of all persons similarly situated.

B. Plaintiffs Andrew Ramsey and Mason Bryant who hereinafter are referred to simply as plaintiffs B are negro-Americans who are residents and voters of Marion County, Indiana and they live in an area hereinafter referred to as "The Ghetto Area" and which is hereinafter defined as to the United States Census tracts contained therein and the streets and known geographic lines surrounding the said cluster of census tracts. It is alleged hereinafter that the said plaintiffs are part of a cognizable interest group which regularly engages in bloc voting whenever the opportunity presents itself in the form of a candidate well-known to favor their interests but whose bloc voting is cancelled out by the voting of contrary interest groups in Marion County-wide elections. Because of this the plaintiff's are complaining that their vote is invidiously dilluted in Indiana General Assembly Elections by the unnecessary multi-member districting at-large of General Assembly seats in Marion County, Indiana. Plaintiffs (B) sue in their own interests and on behalf of their said class.

C. Marilyn Hotz is a White-American and a resident of Marion County outside the City of Indianapolis which area is sometimes referred to hereinafter as the White-Suburbanite Belt and the said plaintiff is a Republican by party-preference. The said plaintiff and persons living in his said area include less than one third of the population of Marion County, Indiana but almost one half of the regular Republican Voters of Marion County, Indiana yet they are, by reason of the circumstances hereinafter alleged, deprived of a proportionate voice as to who their Republican state legislators, in years of Republican victories, shall be. The said plaintiff sues in his own interests and in behalf of the interests of his said class.

D. Rowland Allan who hereinafter is referred to simply as Plaintiff (D) is an American Citizen and a resident and voter of Marion County and the said plaintiff is an independent voter who believes that neither the Republican nor the Democrat Party provides the ultimate answer to the economic and social problems confronting our times and so he seeks to vote for the individual rather than the party but he is frustrated in this effort when voting in General Assembly Elections in Marion County because he is confronted with a list of 23 candidates of each party and it is impossible for him to ascertain the personal merits of this many candidates. Plaintiff (D) sues in his own behalf and in behalf of all persons likewise situated.

E. William Walker is a resident and voter of Lake County, Indiana and a negro and he hereinafter is referred to as plaintiff (E). Plaintiff (E) is complaining that although Lake County, Indiana contains about the same number of negroes as Marion County, Lake County negroes have the opportunity to influence the election of only ⅝ as many senators and 11/15 as many representatives as Marion County negroes in Indiana General Assembly elections and his vote is thus, mathematically dilluted because of the multi-member districting of Marion County. Plaintiff (E) sues in his own behalf and in behalf of his said class.

DEFENDANTS (2)

Defendants are the members of the Indiana General Assembly. It is the contention of this complaint that the defendants are acting under color of law to deprive the plaintiffs of equal protection of the law in their voting rights by the continued sanctioning of the following statutes:

III

QUESTIONED STATUTES

> *34-102. Apportionment of representatives.*—Representatives shall be elected from districts comprised of one (1) or more counties and having one

(1) or more representatives as follows: . . . Twenty Sixth District Marion County: fifteen (15) representatives;

(Acts 1965 (2nd Spec. Sess.), ch. 5, sec. 3, p. 18)

34-104. Apportionment of senators. — Senators shall be elected from districts, comprised of one (1) or more counties and having (1) or more senators as follows: . . . Nineteenth District—Marion County: eight (8) senators, two (2) to be elected in 1966

(Acts 1965 (2nd Spec. Sess.), ch. 4, sec. 3, p. 15)

These statutes are being attacked in the context of other pertinent Indiana Statutes which the plaintiffs specifically are refraining from placing under attack in this lawsuit. (3)

It is contended herein that the said statutes dillute the vote of cognizable and legitimate minorities and promote political bossism which compounds the said dillution.

IV

COMPLAINTS

The above named plaintiffs complain of the defendants and for cause of action allege and say:

a. *Dillution of vote of racial minority.*

Plaintiffs (A) and (B) say that the questioned statutes are unconscionably detrimental to the force and effect of the vote of negroes and poor persons living in Marion County, Indiana and they further say:

1. That there is in Marion County, Indiana an area including 1960 United States Census Tracts 220, 501, 502, 503, 508, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 528, 529, 530, 531, 534, 535, 536 and 540 which are contiguous and circumscribed by certain known geographic

boundaries (4) and which area is here and hereinafter simply referred to as "The Ghetto Area" and the said area has demographic characteristics which cause it to be a cognizable minority interest group. (5)

2. There also is in Marion County, Indiana a cluster of voting wards and individual precincts consisting of Wards 1, 4, 5 and 23 and of precincts 1, 2, 3, 4, 5, 6, 10, 11, 12 and 14 of Ward 3, precinct 5 of Ward 2, precinct 5 of Ward 8, precincts 1, 10, 11, 12 and 15 of Ward 20 and precincts 10 and 24 of Ward 28. This area is circumscribed by certain known geographic boundaries (6) and its said boundaries closely coincide with those of the aforesaid Ghetto Area. This voting area is here and hereinafter referred to simply as "The Ghetto Voting area."

3. Because of its said cognizable minority characteristics the Ghetto Area has an unusual interest in specific areas of substantive law which are under the control of the defendant, General Assembly. (7)

4. The said Ghetto Area exists as a Ghetto Area involuntarily because of the forced segregation of racial minority groups and persons of low income by the majority of inhabitants and by Marion County and Indianapolis City Government. The majority of inhabitants and local government in Marion County have long followed a pattern of creating problems among racial minorities and low income families by segregating them into one area (8) and then seeking to bypass the government burden created by those problems by maintaining said segregation and by maintaining pseudo-government taxing units which force the said Ghetto Area to endure its own burdens. (9)

5. The defendant, General Assembly has complete control over the form of government units and taxing units in Marion County. (10)

6. With single-member districting the Ghetto Area and Ghetto Voting Area would control the nomination and election of three members of the Indiana House of Representatives and one member of the Indiana Senate. (11) Under the present system of multi-member districting the said areas have almost no political force or control over legislators because the effect of their vote is cancelled out by other contrary interest groups in the District of Marion County, Indiana. (12)

7. There is voter apathy in the Ghetto Area as compared to the remainder of Marion County but where a candidate has come forward and made a strong presentation on civil rights, negro rights and the rights and interests of poor people the Ghetto Voting Area has responded with strong, bloc voting, (13), the effect of which was dilluted.

8. There is a further dillution of the vote of the Ghetto Voting Area which results from the third of the above-listed and complained of statutes in that the County Chairmen of the political parties in Marion County, Indiana are elected by precinct committeemen and vice-committeemen who in turn are elected by the voters of each precinct and each precinct in Marion County thus has two votes at the county party convention regardless of the size of the party vote returned in the precinct. Thus the Ghetto Area which regularly returns a very heavy Democrat vote has only one half the representation to which it is entitled at the Marion County Democrat Party organization convention.

9. The Democrat organization and particularly the County Chairman has a very substantial control over the nomination of prospective state legislators in Marion County Primaries. The said organization and County Chairman sponsor a slate of recommended legislative candidates who are very seldom defeated in the primary. This

substantial control exists because the complained of multi-member districting at large causes the number of candidates to be so large that they cannot become individually known to even the most conscientious and discerning voter.

10. Although three Negroes are in the present Marion County General Assembly delegation to the Indiana House of Representatives they can in no way be regarded as representatives of the Ghetto Area. (15) In the fall election of 1968, the three said Negro Representatives, combined, received less votes than the single losing white candidate who received the least votes among white candidates.

11. The effect of multi-member districting at large in Marion County, Indiana and the effect of the aforesaid mal-apportionment in the election of party county chairmen are cumulative and have a combined, invidious effect dilluting the vote of the Ghetto Voting Area.

12. This plaintiff further alleges and says everything that is hereinafter alleged and said in behalf of plaintiff (C).

b. *Dillution of vote of political minority*

Plaintiff (C) says that the questioned statutes dillute the vote of a political minority in Marion County, Indiana and the said plaintiff further says:

1. That there is in Marion County, Indiana an area bounded by the city limits of Indianapolis and the county limits of Marion County which will here and hereinafter be called the White Suburban Belt and the said belt has cognizable minority characteristics which cause it to be a cognizable minority interest group. (16)

2. Because of its said cognizable minority characteristics, the White Suburban Belt has an interest in specific

areas of substantive law which are under the control of the defendant, General Assembly. For the most part these are the same substantive areas that are of interest to the Ghetto area and, for the most part, the interests of the White Suburban Belt conflict with those of the Ghetto area. (5)

3. The White Suburbanite Belt contains sufficient population to control five representatives and two senators in the General Assembly if there were single member districting of the Indiana General Assembly seats in Marion County but, because of the multi-member districting at large which exists in said county the control of the White Suburban Belt over any legislator is questionable and uncertain.

4. The White Suburban Belt votes heavily Republican and in the fall, 1968 election it returned almost one half of the Republican vote cast in Marion County yet it was able, by law, to send only slightly more than one fourth of the delegates to the Republican Party County Convention where the leaders of the said party were elected. (17)

5. The party leaders who are thus elected effectively control the selection of prospective state legislators in the Republican Party Primary. In one manner or another they recommend a slate and no individual General Assembly candidate ever is able to defeat the party slate in the primary although insurgent slates have defeated organization slates in times of party upheaval.

6. The effect of multi-member districting at-large of General Assembly seats in Marion County, Indiana is that of rendering even the most conscientious and discerning voter helpless to learn the relative merits of the numerous candidates and an expression of trust or distrust in the party leadership is the only voting choice available. The

malapportionment of the precincts from the standpoint of the party organization vote together with the said multi-member districting invidiously dillutes the vote of the White Suburban Belt voter.

7. This plaintiff further says that everything that is hereinafter alleged and said in behalf of plaintiff (D) is hereby incorporated in this plaintiff's complaint.

Plaintiff (D) also says that the complained of statutes dillute the voice of the vote of political minorities in Marion County, Indiana and the said plaintiff further says:

1. That there is a minority group among the voters of Marion County, Indiana who either do not believe in party politics or do not find either of the major political parties sufficiently to their liking to become a member of either. These voters are not cognizable as a minority group and their existence can be shown only through common knowledge and through the fact that the fall election vote in Marion County, Indiana always is substantially higher than the spring party primary vote. (18)

2. Multi-member districting of legislative constituencies automatically has an invidious effect upon plaintiff's vote as an independent voter because it is impossible for him to learn much of value about the numerous candidates for the numerous legislative seats and to vote for the individual rather than the party. Independent voters never have been able to express themselves as a group in Marion County General Assembly elections since the 1921 reapportionment. In the twenty four elections which have taken place since 1921 one major party or the other has won all of the Marion County legislative seats in all but two of them and in the two remaining elections the split was caused by ethnic bigotry against the losing candidates and not by a bloc of independent votes. (19)

3. There is no rational basis for the multi-member-at-large legislative-districting of Marion County, Indiana and the geographic compactness of the said county falls far short of providing such a rational basis. There are forty one voting wards in Marion County and the average ward in the fall, 1968 election voted almost two to one in favor of one of the major political parties over the other while, in the Southern District of Indiana, there is a contiguous group of thirty six counties which contain no multi-member districts and which contain about the same total population as Marion County. There was a less than ten percent margin in the number of votes cast for each major political party in the average of these counties in the 1968 fall election. The said single-member-thirty-six-county area's fall, 1968 election vote demonstrated far more homogeniety than that which existed in the more compact but equally populated district of Marion County. The average ward in Marion County showed almost a two-to-one preference for one party or the other while the typical county in the aforesaid single-member-districted area of similar population showed less than a 53% to 47% preference for one party or the other. (20)

4. There is fear and concern among the inhabitants and political leaders of the State of Indiana that Marion County might become a powerful political force in the State of Indiana and efforts have been made to suppress Marion County as a political force ever since it first achieved a plurality among the counties. (21)

5. The multi-member districting of Marion County dilutes the votes of all voters of Marion County, Indiana because it capatilizes on the tendancy of larger counties in Indiana to experience more shifts in party preference (22) to cause Marion County to have a very high turnover rate among its representatives and senators. (23) Freshmen

legislators in Indiana consistently fail to sponsor as much enacted legislation as experienced legislators (24) and Marion County, Indiana is thus substantially disabled as a voting force. Under single-member districting there would be a substantial proportion of safe seats among the Marion County House and Senate General Assembly seats and delegations. (25) This problem is unique to Marion County among the multi-member districts of the State of Indiana. (26)

c. *Discrimination per se—political and geographical*

Plaintiff (E) alleges and says that multi-member districting gives certain inhabitants and voters in a larger multi-member district a mathematically unconscionable advantage over the said plaintiff. The said plaintiff further says:

1. That there is a county known as Lake County, Indiana which is second only to Marion County, Indiana in the number of inhabitants it contains and is equal or almost equal to Marion County, Indiana in the number of negro inhabitants and negro voters which it contains, and which county probably would elect as many negro-rights conscious legislators to the Indiana General Assembly as would Marion County, Indiana if single districting prevailed in both counties.

2. That in both Lake and Marion County, Indiana there are a sufficient number of negro voters and inhabitants for a bloc vote by the said inhabitants to change the result of any election recently held. (27)

3. In the number of its inhabitants and in the number of its General Assembly delegates, Lake County, Indiana is about ¾ the size of Marion County, Indiana. Lake

County, like Marion County is an at-large-multi-member district for purposes of electing delegates to the defendant, General Assembly.

4. The four to three ratio which exists between inhabitants and voters of the said counties results in and will continue to result in a four to three apportionment ratio between the said counties in the number of General Assembly seats allotted to each but this four to three ratio on a multi-member-at-large-districting basis in Marion County will result in an invidious dillution of the Lake County negro vote and voter influence with respect to the defendant, General Assembly.

5. Voter influence does not decrease in a direct inverse ratio with the population or voter population of a district because the rules of mathematics inject a square root factor into the denominator of the said equation and fraction. Because of this the vote of each Lake County voter does and will continue to effect the election of only ¾ as many general assemblymen as the vote of each Marion County voter but the probability of a typical Marion County Voter's having the opportunity to effect the result of an individual General Assembly delegate contest will not be an inverse ¾ that of the Lake County voter; it will, instead, be about 86.80% that of a Lake County voter's said opportunity and ability.

6. The following commonly conceived of, believed in, and acted upon ratio with respect to the measure of influence which a typical voter in a multi-member legislative district exerts in comparison to a voter in a similar district of a different size is not correct:

$$\frac{W \cdot X}{Y \cdot Z} = 1$$

W—Being the number of legislators to be elected in the larger multi-member district.

X—Being the number of inhabitants or voters in the smaller multi-member district.

Y—Being the number of legislators to be elected in the smaller multi-member district.

Z—Being the number of inhabitants or voters in the larger multi-member district.

7. The true ratio which obtains between large and small multi-member legislative districts contains a square root factor in the denominator which renders it mathematically impossible to achieve a truly equitable apportionment among multi-member legislative districts of different sizes. Under the popular inverse ratio concept a Marion County inhabitant or voter would have only 75% the influence over the election of each individual legislator as would be available to a Lake County voter but, in fact, the true ratio being not that stated above, but instead, a ratio of ½ X 1/pi X 1/N with the square root to be taken of the product of the denominators and with "N" being the number of voters or inhabitants, which ratio results in an 86.80 measure of influence for each Marion County voter over the election of any state legislator rather than the 74.17% measure of influence which would be and is presumed to obtain under the direct inverse-ratio theory which prevails and which did prevail in the original concept of proportionate multi-member districting. (28)

8. The defendant, General Assembly is and has been and will be for a substantial period of time in the future, confronted with the problem of overcoming the effect of

past injustices perpetrated upon racial minorities in Marion County, in Lake County and in the State of Indiana as a whole. Both Marion County, Indiana and Lake County, Indiana, which contain the two largest negro ghettos in the State are the sole matter for consideration before two separate state legislative committees, one directed to the affairs of each county. The laws enacted by defendant which directly effect Marion or Lake County typically apply to only one county or the other. The result of the aforesaid is that there is competition between the negro population of both of the said counties to capitalize upon the general concern which has arisen among the general public and its legislators and in the course of the said competition, Marion County Negroes enjoy an unconscionable advantage dilluting the voting power of Lake County Negroes because of the aforesaid facts and because of the above-quoted districting statute.

V

WHEREFORE

For the reasons given an order is sought declaring the at-large provisions in Indiana Acts 1965 (Spec. Sess.) chapters 4 and 5 unconstitutional insofar as they apply to Marion County, Indiana and directing the Indiana General Assembly to achieve a proper legislative apportionment in Marion County, Indiana.

Plaintiff's pray for the following action by this Court:

(a) That a three-judge court be convened to determine the constitutionality of the questioned statutes.

(b) That a hearing be held and evidence heard to determine whether the questioned statutes have the invidious effect of causing the votes cast in the above-designated and described Ghetto Area, White Suburban Belt, Marion County District and Lake County District to have a force and effect upon the deliberations and enactments of the defendant, Indiana General Assembly so inferior to the force and effect of the votes cast generally by the inhabitants of the State of Indiana in other districts as to constitute a denial of equal protection of the law.

(c) That the declaration prayed for be made at the conclusion of such a hearing and that an appropriate order issue.

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MEMORANDUM 1

IN VIEW OF TWO RECENT DECISIONS OF THE UNITED STATES SUPREME COURT THERE CAN BE NO QUESTION THAT THIS COMPLAINT CANNOT BE SUBJECTED TO A MOTION TO DISMISS AND THAT THIS COURT HAS JURISDICTION TO TRY THE ISSUES OF FACT WHICH ARE BEING PRESENTED BY THE ALLEGATIONS HEREIN MADE.

The United States Supreme Court has twice refused to hold that a state legislature should be ordered to divide a multi-member-at-large constituency of such legislature in order to give equal force and effect to the vote of a minority within such district.

In *Fortson v Dorsey,* (1965) 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 the appeal was from a district court in Georgia where the court had ordered that Fulton County, Georgia should be subdivided so that the negro ghetto would have its own representatives in the state legislature. The theory upon which this relief had been granted was summarized by the Supreme Court as follows:

> *Footnote 3:* Appellees take as their example, Senatorial District 34, in which there are 82,196 of Fulton County's total of 556,326 voters. They say, as a matter of mathematics, that even if every voter in District 34 voted for the same candidate from that district, less than 18% of the voters in the other six districts within the county (i.e. approximately 85,000 of the remaining 474,131 voters in the county) could outvote the unanimous choice of District 34 voters. First of all, there is no political composition of District 34 vis-a-vis that of the rest of the county.
>
> . . . . . .

Fortson v Dorsey, (1965) 379 U.S. 433; 85 S.Ct. 498; 13 L.Ed.2d 401, 404.

In reversing the District Court the Supreme Court made it clear that the decision was being reversed, not because it was contrary to law but because it was not sustained by sufficient evidence. The invidious effect of the at-large district had been presumed and not proved.

> In reversing the District Court we should emphasize that the equal-protection claim below was based upon an alleged infirmity that attaches to the statute on its face. Agreeing with appellee's contention that the multi-member constituency feature of the Georgia scheme was per se bad, the District Court entered the decree on summary judgment. We treat the question as presented in that context, and our opinion is not to be understood to say that in all instances or under all circumstances such a system as Georgia has will comport with the dictates of the Equal Protection Clause. It might well be that designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.
>
> *Fortson v Dorsey,* (1965) 397 U.S. 433; 85 S.Ct. 498; 13 L.Ed.2d 401, 405.

In *Burns v Richardson*, (1966) 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed.2d 376 the District Court of Hawaii had declined to order the further sub-dividing of a state legislature's multi-member constituency and the District Court was affirmed, but again only because of the lack of evidence of an actual denial of equal protection. In *Burns v Richardson* the United States Supreme Court went out of its way to emphasize the fact of its willingness to require the subdividing of a multi-member-at-large, state-legislative district upon proof that the at-large quality of such a district was, in fact, depriving a geographic portion of the district of equal protection of the law by reason of an unconscionable dillution of its vote.

> The Equal Protection Clause does not require that at least one house of a bicameral state legislature consist of single-member legislative districts. See Fortson v. Dorsey, 397 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401. Where the requirements of Reynolds v Sims are met, apportionate schemes including multi-member districts will constitute an invidious discrimination only if it can be shown that "designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." Id, at 439, 85 S.Ct. at 501. It may be that this invidious effect can more easily be shown if, in contrast to the facts in *Fortson*, districts are large in relation to the total number of legislators, if districts are not appropriately subdistricted to assure distribution of legislators that are resident over the entire district, or if such districts characterize both houses of a bicameral legislature rather than one. But the demonstration that a particular multi-member scheme effects an invidious result must appear from evidence in the record. Cf. McGowan v State of Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393. That demonstration was not made here.
>
> *Burns v Richardson,* (1966) 384 U.S. 73; 86 S.Ct. 1286, 1294; 16 L.Ed.2d 376.

The lesson in the above cited cases was not lost upon the Georgia Legislature which voluntarily adopted a single-member districting plan after *Fortson v Dorsey,* (Ga Laws, 1965, Act No. 77). The result was the election of such noted spokesmen as Julian Bond.

In view of the above-quoted portions of the above-quoted decisions of the United States Supreme Court it is submitted that this Court has jurisdiction to hear this matter and to hear a trial of this cause.

This lawsuit will not present the obvious type of inequities which appeared in the prior apportionment suits tried in this United States District Court for the Southern District of Indiana but it will present inequities that are equally if not more invidious. The subtlety of a denial of equal protection of the law cannot be permitted to have the effect of rendering it immune from judicial notice and judicial action.

> One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." Lane v Wilson, 307 U.S. 268, 275, 83 L.ed. 1281, 1287, 59 S.Ct. 872; Gomillion v Lightfoot, 364 U.S. 339, 342, 5 L.ed.2d 110, 113, 81 S.Ct. 125.
>
> *Reynolds v Sims,* (1964) 377 U.S. 533, 563; 84 S.Ct. 1362; 12 L.Ed.2d 506, 528.

Although the Supreme Court has declined to decree that multi-member districts are unconstitutional per se it has, with respect to a legislative district almost identical to Marion County, taken judicial notice of the fact that a large number of legislative candidates on a ballot automatically frustrates the expression of minority group interests in the vote and renders an intelligent choice among the candidates almost impossible.

> One of the most undesirable features of the existing apportionment scheme was the requirement that, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole. Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome,

> and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies *within* the populous counties resulted and the residents of those areas had no single member of the Senate or House elected specifically to represent them. Rather, each legislator elected from a multi-member county represented the county as a whole.
>
> *Lucas v Colorado General Assembly,* 377 U.S. 713, 731; 12 L.Ed.2d 632, 644; 84 S.Ct. 1472 (1964).

It appears from the foregoing that the plaintiffs' burden of proof in this case is that of showing that minority interests exist in Marion County, Indiana, that they express themselves through their voting franchise when they are afforded such an opportunity, that multi-member districting precludes them from having such an opportunity with respect to the election of general assembly delegates, that they are cognizable geographically to an extent that would cause single-member districting to make a difference and that the expression of their minority interests through the use of their franchise in General Assembly elections is vital to their said interests. Proof of malice on the part of the majority in frustrating the said minorities and interest groups also appears to be relevant to fulfilling the burden of proof herein but the Supreme Court's choice of words (i.e. "designedly or otherwise") in both the *Fortson* and *Burns* decisions, supra, indicates that such proof is not an essential element.

In undertaking the said burden of proof the plaintiffs' are attaching voluminous memoranda or footnotes to the complaint. While these will burden the reader of this complaint it is believed that they eventually will relieve the court of a substantial burden that would be involved in hearing involved and complex oral testimony. Ten days after the filing of this complaint the plaintiff's will file requests for admissions relating to all of the matters alleged in the complaint and the memoranda for the purpose of minimizing the oral testimony that will have to be heard at the hearing in this cause.

MEMORANDUM 2

THE GENERAL ASSEMBLY IS A PROPER PARTY DEFENDANT AND THE PLAINTIFF'S PROPERLY REPRESENT THEIR RESPECTIVE CLASSES.

The General Assembly has been named as the party defendant instead of the state officials who would execute the questioned statutes because, in the case of apportionment statutes, a substantive area is involved where the General Assembly has a continuing duty to act and the plaintiffs are thus entitled to an affirmative remedy while in the case of other statutes the only remedy is that of enjoining their further execution. There is precedent for naming a legislature as defendant in *Lucas v Colorado General Assembly*, supra.

All of the plaintiffs are suing as a class. In the case of the negro and independent voter plaintiffs there can be no question that their respective classes would favor the relief being sought but their might be some question as to whether this is the case in the instance of the white suburban belt plaintiff. This, however, would be an irrelevant question because a mal-apportionment be justified by even an official referendum, much less by proof of sentiment.

> A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy

the basic requirements of the Equal Protection Clause, . . .

Lucas v Colorado General Assembly, 377 U.S. 713, 737; 84 S.Ct. 1472; 12 L.Ed.2d 632, 647.

MEMORANDUM 3

UNAVOIDABLY, THE UNCONSTITUTIONALITY OF OTHER INDIANA STATUTES WILL BECOME MANIFEST DURING THE LITIGATION IN THIS CAUSE. THESE STATUTES ARE NOT UNDER ATTACK AND THE PROPER PARTIES DEFENDANT HAVE NOT BEEN NAMED FOR SUCH AN ATTACK.

The unconstitutionality of certain aspects of Indiana's party organization statute and the Marion County governmental and taxing unit statutes will become manifest in the course of the presentation which the plaintiffs contemplate making in this cause. (See Memoranda 9 and 17) Because of the complexity of this case just on the issues being raised by the questioned apportionment of Marion County, the plaintiffs specifically are refraining from any constitutional attack on these other statutes.

MEMORANDUM 4

THE CENSUS TRACTS WHICH MAKE UP THE GHETTO AREA ARE CONTIGUOUS AND CIRCUMSCRIBED BY KNOWN LANDMARKS AND THE GHETTO AREA THUS IS GEOGRAPHICALLY COGNIZABLE.

The said Ghetto Area in Marion County, Indiana is circumscribed by a line beginning at the intersection of White River, Central Canal and Forth Second Street and proceeding one block east and one block north to 43rd Street and then proceeding east on 43rd Street to Pennsylvania Avenue and then south on Pennsylvania Avenue to

34th Street and then east on 34th Street to Keystone Avenue and then south on Keystone Avenue to 30th Street and then east on 30th Street to Dearborn and then south on Dearborn to Massachusetts Avenue and then southwest on Massachusetts Avenue to Commerce and then southeast on Commerce to Tecumseh and then south on Tecumseh to 10th Street and then west on 10th Street to College Avenue and then north on College Avenue to 21st Street and then west on 21st Street to Capitol Avenue and then south on Capitol Avenue to 10th Street and then west on 10th Street to the Canal and then south on the Canal to Washington Street and then west on Washington Street to Minerva Street and then north on Minerva Street to Michigan Street and then west on Michigan Street to Locke Street and then north on Locke Street to Fall Creek and then north on Fall Creek to 16th Street and then west on 16th Street to Belmont and then north on Belmont to 38th Street and then east on 38th Street to the White River Central Canal and then northeast on the said canal to where it makes its closest approach to 42nd Street.

This Ghetto Area has expanded and by 1967 it covered an area circumscribed by the following known landmarks: Beginning at the Central Canal, White River at 43rd Street and following 43rd Street east to Pennsylvania Avenue and then south on Pennsylvania Avenue to 38th Street and then east on 38th Street to Massachusetts Avenue and then southwest on Massachusetts Avenue to Ralston Avenue and then south on Ralston Avenue to 10th Street and then west on 10th Street to College Avenue and then North on College Avenue to 21st Street and then west on 21st Street to Capitol Avenue and then south on Capitol Avenue to 10th Street and then west on 10th Street to Boulevard Place and then South on Boulevard Place to Washington Street and then west on Washington Street to Locke Street and then North on Locke Street to 18th Street and then west on 18th

Street to Bellmont Avenue and then North on Bellmont Avenue to 38th Street and then east on 38th Street to Central Canal White River and then north on Central Canal, White River to the near intersection of Central Canal, White River and 43rd Street.

The Ghetto Area as it existed in 1960 is portrayed on the following diagram:

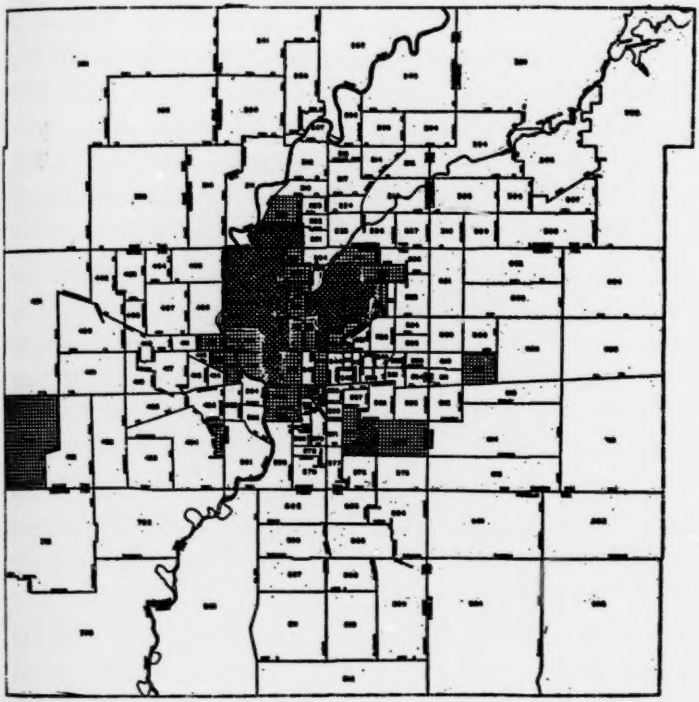


Figure 9

NON-WHITES, AS PERCENT OF TOTAL POPULATION, BY CENSUS TRACT, MARION COUNTY, 1960

Research Department—Community Service Council of Metropolitan Indianapolis Source: U.S. Census

KEY:
▭ LESS THAN [illegible]
▬ [illegible] TO [illegible]
▬ [illegible] AND OVER

MEMORANDUM 5

THE GHETTO AREA HAS DEMOGRAPHIC CHARACTERISTICS WHICH CAUSE IT TO BE A COGNIZABLE MINORITY INTEREST GROUP.

As of the 1960 Census the 1960 Ghetto Area had the following characteristics which distinguished it from Marion County, Indiana as a whole:

A. As of the time of the 1960 United States Census the Ghetto Area contained 105,808 inhabitants including 75,221 negro inhabitants and 30,587 white inhabitants the said area thus being 71.09% inhabited by negro inhabitants according to the 1960 census as opposed to the 15.18% figure which the 1960 census found to be the percentage of negro inhabitants of Marion County, Indiana as a whole.

B. The balance of Marion County, Indiana outside the Ghetto Area, at the time of the 1960 census consisted of 24,691 negro inhabitants and 566,251 inhabitants who were other than negro the said balance of Marion County thus consisting of only 4.17% negro inhabitants in contrast to the 71.09 percentage which prevailed in the Ghetto Area.

C. While the Ghetto Area contained but 15.80% of the Marion County population it contained 40.45% of the dillapidated housing units in the said county as of the 1960 census.

D. While the Ghetto Area contained but 15.8% of the Marion County population it contained 29.12% of the Marion County population dependent upon public transportation to go to and from work as of the 1960 census.

E. While the Ghetto Area contained but 15.8% of the Marion County Population it contained 22.00% of the county population housed in dwellings containing fewer rooms than inhabitants as of the 1960 census.

F. While the Ghetto Area contained but 15.8% of the Marion County population it contained 28.74% of the unemployed Marion County population as of the 1960 census.

G. While the median family income for Marion County, Indiana was $6,609 as of the 1960 census, in negro families located in the census tracts containing more than 400 such families the median family income was $4,390 as of the 1960 census or 66.42% of the total median income figure for all of Marion County including non-whites and whites. All of the aforesaid census tracts containing 400 or more negro families were in the Ghetto Area.

H. While the Ghetto Area contained but 15.8% of the Marion County population it contained 31.47% of the statistical-functional illiterates (being over 25 years of age with four years of schooling or less) in the county as of the 1960 census.

I. The average of the years-of-education medians of the 24 census tracts in the Ghetto Area as of the 1960 census was 9.5 years and the median years-of-education for non-whites in the entire County of Marion was 9.2 years while the median years-of-education of all persons in the County of Marion was 11.5 years.

J. As of the 1960 census the Ghetto Area was inhabitated by 2821 persons with four or more years of college who will hereinafter be referred to simply as "college graduates". Three of the 24 census tracts in the Ghetto Area are in what is known as the Butler-Tarkington community which is an enlightened, integrated neighborhood inhabited by professors, instructors and graduate students at nearby Butler University, almost all of whom are white and a fourth census tract is in the neighborhood of John Herron Art Museum and it too is inhabited by instructors, curators and graduate students at the said museum almost all of whom are white. When these four census tracts are abstracted from the Ghetto Area the remaining area contains only 1245 college graduates out of 82,203 inhabitants the percentage of inhabitants who are college graduates being 1.51%. Stated from another aspect, only 1245 of the 33,816 college graduates in Marion County as of the 1960 census or 3.86% of them lived in the said 20 census tract 1960 Ghetto Area while 11.76% of the people of Marion County lived in the said area. It is correct to abstract the said four census tracts from the 24 tract Ghetto Area in making these computations because the total of 2821 college graduates in the entire 24 census tract Ghetto area exceeds by more than 1000 the 1,734 non-white college graduates in the entire county as of the 1960 census.

To a very substantial extent, negroes in Marion County, Indiana, taken as a group, and inhabitants of the Ghetto Area, taken as a group, amount to much the same thing and statistics applicable to negroes in Marion County are meaningful to a portrayal of the problems and singular interests of the Ghetto Area.

The Ghettoization of Marion County negroes is increasing and not decreasing by reason of the operations of racial prejudice in housing and real estate buying as is evidenced by the fact that the negro population in the outlying census tracts of Marion County decreased during the 1950-1960 decade while increasing in the inward tracts as is shown by the following diagram:

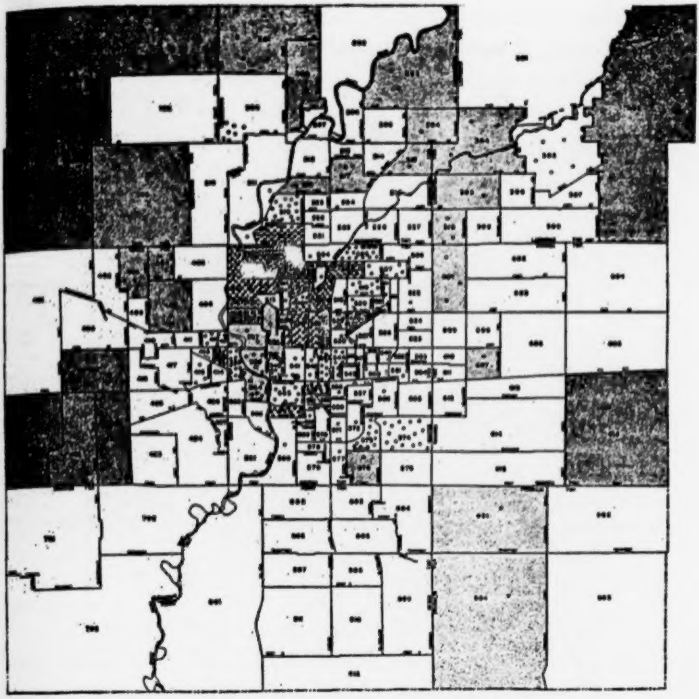


Figure 10

DIFFERENCE IN PERCENT OF NON-WHITES IN TOTAL POPULATION 1950-1960, BY CENSUS TRACTS MARION COUNTY

Research Department
Community Service Council
of Metropolitan Indianapolis

Source: 1960 Census

Base Map Furnished By
Metropolitan Planning Department
Marion County, Indiana

Key:

- • Approx. 1% Larger Proportion of Non-Whites in '60 than in '50
- ° Approx. 1% Smaller Proportion of Non-Whites in '60 than in '50

While the negro population of Marion County, Indiana is being moved inward the white population is steadily moving outward and the long tradition of segregation which has prevailed in this county (See Memorandum 8) at least through 1960 if not to the present day. While the negro population in Marion County, Indiana is being moved inward the white population steadily is moving outward as the following diagram demonstrates:

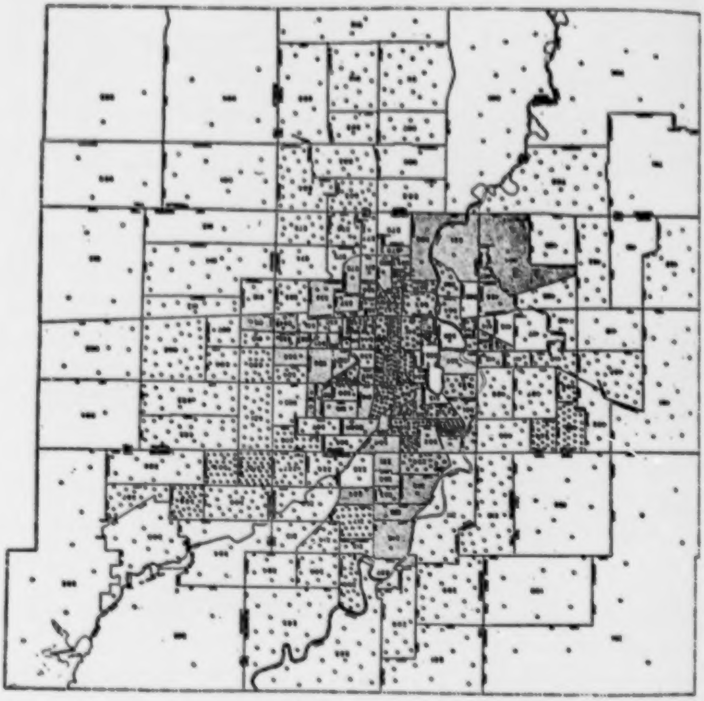


Figure 7

WHITE POPULATION CHANGE 1950-1960, BY CENSUS TRACTS, MARION COUNTY

Research Department
Community Service Council
of Metropolitan Indianapolis
Source: 1960 Census

Key:
- • Approx. 150 Person Increase
- ˙ Approx. 150 Person Decrease

Negro inhabitants of Marion County and Ghetto inhabitants of Marion County have long had special interests foisted upon them by their being forced to live close together in a compact Ghetto Area where the economic and other individual problems which are common to negroes because of their being socially ostracized become social problems and interest group problems.

As is commonly the case with the poor, negroes in Marion County have a higher birth rate than the whites in said county:

TABLE VII FERTILITY RATE PER 1,000 POPULATION, BY COLOR, MARION COUNTY AND INDIANAPOLIS, 1960-1965

	Marion County			Indianapolis		
Year	Total	White	Non-White	Total	White	Non-White
1960	25.7	24.1	35.3	27.4	25.3	35.5
1961	25.5	23.9	34.8	27.5	25.5	35.1
1962	24.9	23.5	33.1	27.0	25.3	33.3
1963	23.6	21.9	33.3	25.6	23.6	33.3
1964	22.5	21.1	31.1	24.4	22.6	31.2
1965	20.5	19.1	28.8	21.8	20.0	28.8

Source: Health and Hospital Corporation of Marion County

Thus, while negroes constituted only 14.07% of the Marion County population in 1960 they constituted almost 30% of the Indianapolis school enrollment in 1965. (Negro enrollment in Marion County schools other than Indianapolis schools was negligible.)

TABLE XVIII ENROLLMENT OF INDIANAPOLIS PUBLIC ELEMENTARY SCHOOLS AND HIGH SCHOOLS, BY RACE, INDIANAPOLIS, JUNE, 1965

Grade	White	Negro	Percent Negro
Total	68,024	28,840	29.7
Elementary	49,307	21,538	30.4
High School	18,717	7,302	28.1

Source: Indianapolis Public Schools

Because of the above-shown facts, negroes in Marion County, Indiana, as an interest group, and the Ghetto Area residents, as an interest group, have a specially strong interest in school policy and school districting and school budgeting in Marion County, Indiana. The governmental structure under which such policies are evolved and under which such districting and budgeting is accomplished is under the complete control of the Indiana General Assembly. As matters now stand, there is very substantial de facto segregation in the Indianapolis School System, only five of the ten major high schools having an enrollment of both races in excess of one percent:

TABLE XIX PUBLIC HIGH SCHOOL ENROLLMENTS, BY RACE, INDIANAPOLIS, JUNE, 1965

School	White	Negro	Percent Negro
Arlington	3,150	21	*
Technical	3,637	1,665	31
Broad Ripple	1,637	4	*
Crispus Attucks	0	2,611	100
Emmerich Manual	2,366	197	8
George Washington	1,722	362	17
Harry E. Wood	1,340	352	21
Northwest	1,787	2	*
Shortridge	739	2,021	73
Thomas Carr Howe	2,190	25	1
James E. Roberts	27	4	13
Riley Hospital	58	7	11
Juvenile Center	54	29	35
Homebound	10	2	17

* Less than 1 percent.
Source: Indianapolis Public Schools

This segregation enables the school board to engage in a budgeting apportionment so demographically unrealistic as to fall short even of the rudimentary requirements of *Plessy v Ferguson*. Only single-member districted negro legislators, capable of acquiring "safe seats" if they serve their constituents well, would be capable of mounting the sustained offensive necessary to overcome the deep seated problems in the organization of Marion County Government which are detrimental to negroes and the poor. Governmental reform is not happening and will not happen so long as the Ghetto Area vote is dilluted by multi-member districting. To the contrary, at the time of the filing of this lawsuit the Marion County General Assembly delegation was busily lobbying for "governmental reform" which would do little else that further dillute the Getto Area vote in direct contravention of the dictates against such devices in *Gomillion v Lightfoot*, 364 US 339, 342, 5 L.ed. 2d 110, 113, 81 S.Ct. 125.

The people of the Ghetto Area have still other demographic characteristics, many of a socially critical nature, which cause them to be a distinct interest group apart from the remainder of Marion County.

Infant mortality among negroes in Marion County is much higher than it is among whites:

TABLE XLI INFANT MORTALITY, BY COLOR, MARION COUNTY, 1960-1966

	Number		Rate	
Year	White	Non White	White	Non-White
1960	327	148	22.7	41.7
1961	319	121	21.3	34.6
1962	314	119	22.4	35.7
1963	297	133	21.9	38.6
1964	291	127	21.9	38.8
1965	255	125	20.9	40.7
1966	269	117	22.8	37.2

Source: Health and Hospital Corporation of Marion County

The mortality rate of negroes of all ages in Marion County, Indiana also is substantially higher than it is among whites.

TABLE VIII MORTALITY RATE PER 1,000 POPULATION, BY COLOR, MARION COUNTY AND INDIANAPOLIS, 1960-1965

	Marion County			Indianapolis		
Year	Total	White	Non-White	Total	White	Non-White
1960	9.0	8.7	10.9	10.6	10.6	10.9
1961	8.9	8.6	10.6	10.4	10.3	10.7
1962	9.0	8.7	11.0	10.6	10.5	11.1
1963	9.4	8.9	12.3	11.0	10.6	12.3
1964	9.1	8.6	12.3	10.7	10.3	12.3
1965	8.9	8.4	11.5	10.4	10.8	11.5

Source: Health and Hospital Corporation of Marion County

Economic dependency among children also is proportionally very high in Marion County. As of July 1, 1964, 72% of the aid to dependent children cases in Marion County involved negro children although negroes did not total much more than the 14.07% percentage figure which was their proportion of the Marion County population in 1960.

From 1950 through 1965 illegitimate births increased threefold in Marion County, Indiana increasing from 545 in 1950 to 1,618 in 1965 and during all of the said years, although negroes comprised an average of only about 14% of the Marion County population, more than one half of the illegitimate births were negro births.

Year	Illegitimate Births	Percent White	Percent Non-White
1950	545	46	54
1951	573	41	59
1952	630	44	56
1953	662	47	53
1954	773	43	57
1955	819	44	56
1956	875	42	58
1957	993	40	60
1958	1,114	41	59
1959	1,121	39	61
1960	1,231	40	60
1961	1,359	40	60
1962	1,366	41	59
1963	1,525	40	60
1964	1,653	43	57
1965	1,618	40	60

Source: Health and Hospital Corporation of Marion County

Stated from another aspect, only one out of twenty white births in Marion County, Indiana are illegitimate births while almost one third of the negro births in Marion County, Indiana are illegitimate births and ten percent of these births originate from circumstances amounting to statutory rape:

TABLE XXXVI ILLEGITIMATE BIRTHS, BY COLOR AND AGE OF MOTHER, MARION COUNTY, 1965

Age of Mother	White		Non-White	
	Number	Percent	Number	Percent
15 Years and Under	32	4.9	103	10.6
16-20	312	48.1	454	46.8
21-30	233	35.9	313	32.3
31 and Over	71	10.9	95	9.8
Unknown	1	.2	4	.4

Source: Health and Hospital Corporation of Marion County

Although negro youth constituted only about 20% of the Marion County youth population they constituted 42.86% of the youthful offenders in 1966 and their offenses tended more to be more of the sort that are felonies when committed by adults while the white juvenile offenses tended more to be of the sort that are misdemeanors when committed by adults.

TABLE XL TYPE OF OFFENSE OF PETITIONS RECEIVED, BY RACE, MARION COUNTY, 1966

Type of Offense	White		Negro	
	Number	Percent	Number	Percent
Conduct Offense	1,088	47.9	577	33.9
Personal Offense	73	3.2	117	6.9
Property Offense	933	41.1	829	48.6
Other	178	7.8	180	10.6
Total	2,272	100.0	1,703	100.0

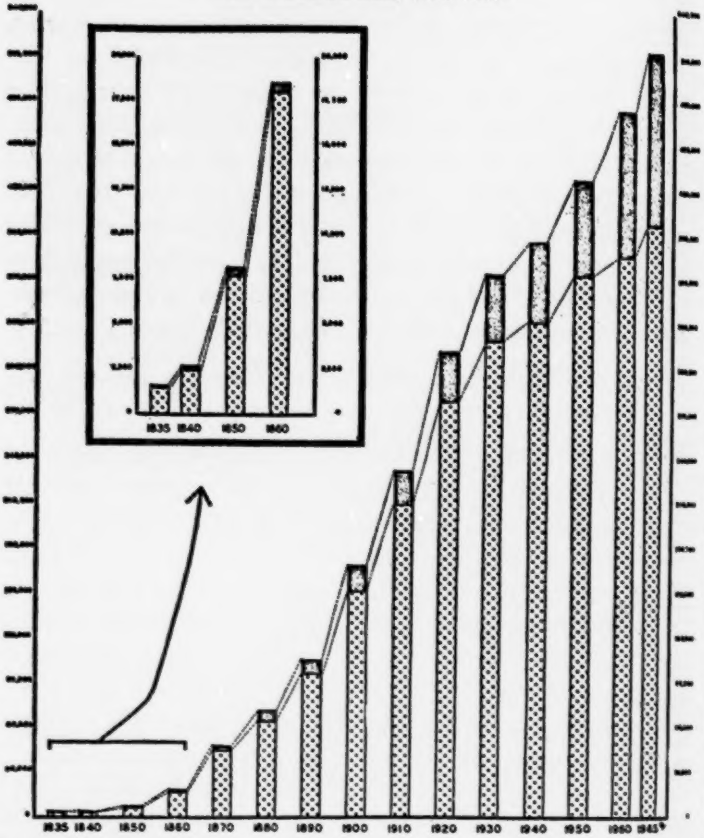
Source: Marion County Juvenile Court

The General Assembly has control over the structure of the Marion Juvenile Court and the scope of its facilities. Presently, two/thirds of the Juvenile offenders in Marion County who are placed on probation are placed on "informal" probation as opposed to a one/third average for the state as a whole. Marion County as a whole has a problem in that it has become necessary for the courts to send a substantially higher percentage of its citizens to prison than the percentage which prevails in other counties. While Marion county contains only about 15% of the population of Indiana, 25.4% of the persons admitted to state correctional institutions in 1966-1967 were from Marion County.

The percentage of negroes in Indianapolis, Indiana has increased steadily over the past century and it can be expected to increase steadily in the future:

Figure 5

POPULATION GROWTH BY COLOR FOR INDIANAPOLIS, 1835-1965*



Research Department
Community Service Council
of Metropolitan Indianapolis
Source: U.S. Census
* Estimated

The above-noted problems will increase with their number.

The percentage of negroes in the State of Indiana has shown a similar increase over the past one hundred years.

TABLE II NEGRO POPULATION AND PERCENT OF TOTAL POPULATION, INDIANA, 1860-1960

Year	Negro Population[a]	Total Population[b]	Negro Percent of Total Population
1860	11,428	1,350,428	.8
1870	24,560	1,680,637	1.5
1880	39,228	1,978,302	2.0
1890	45,215	2,192,404	2.1
1900	57,505	2,516,462	2.3
1910	60,320	2,700,876	2.2
1920	80,810	2,930,390	2.8
1930	111,982	3,238,503	3.4
1940	121,196	3,427,796	3.5
1950	175,712	3,934,224	4.5
1960	273,944	4,662,498	5.9

[a] Source: Indiana Historical Bureau
[b] Source: U. S. Census

The percentage of negroes in the entire state is quite small and there are only two parts of the state where they are living together in a sufficiently large number to control the election of an Indiana legislator. Yet wherever negroes are living together in substantial numbers there is multi-member districting for seats in the General Assembly. 87.59% of the negroes in Indiana live in multi-member districts while only 46.94% of the white people live in such districts. The single districting of Marion County, Indiana would cause the aforesaid percentage figures to be 51.09% and 33.25% respectively, a more balanced figure more in keeping with the Kerner report's recommendation with respect to multi member districting.

> It is plain that the Negro ghetto resident feels that he is not represented fairly and adequately under the arrangements which prevail in many cities. This

condition strikes at major democratic values. To meet this problem, city government and the majority community should revitalize the political system to encourage fuller participation by all segments of the community. Whether this requires adoption of any one system of representation we are not prepared to say. But it is clear that at-large representation, currently the practice in many American cities, does not give members of the minority community a feeling of involvement. *U.S. Riot Commission Report,* Bantam p. 296.

MEMORANDUM 6

The Ghetto Voting Area, because of the substantial population changes which have taken place since 1960, is defined to coincide with the previously described 1967 Ghetto Area rather than the previously described 1960 Ghetto Area. This Ghetto Voting Area can be described by means of known geographic entities as being the area within the line beginning at 43rd Street and White River, Central Canal and proceeding east on 43rd Street to Washington Boulevard and then south to 40th Street and then east on 40th Street to New Jersey Street and then south on New Jersey Street to 38th Street and then east on 38th Street to Sheridan Road and then South on what would be a line extending Sheridan Road to the New York Central Railroad Tracks and then southwest on the said railroad tracks to Steele Street and then southward on a meandering course on Steele and Windsor Streets to 10th Street and then east on Tenth Street to Shelby Street and then north on Shelby Street to 11th Street and then west on 11th Street to College Avenue and then North on College Avenue to 21st Street and then west on 21st Street to Talbot and then south on Talbot to 21st Street (21st Street jogs at this point) and then west on 21st Street to Meridian Street and then south on Meridian Street to 19th Street and then west on 19th

Street to Capitol Avenue and then South on Capitol Avenue to 9th Street and then west on 9th Street to West Street and then North on West Street to 10th Street and then west on 10th Street to White River and then northwesterly on White River to a line even with Belmont Street and then north on said line to 38th Street and then east on 38th Street to Northwestern Avenue and then northwest on Northwestern Avenue to the canal and then north east on the said canal to 43rd Street and then due east to White River and 43rd Street.

MEMORANDUM 7

In Memorandum 5 there has been some discussion of certain substantive areas under the control of the Indiana General Assembly which are of particular and special interest to the Ghetto Area. Certain additional statutes enacted by and under the control of the Indiana General Assembly which also are of special interest to the Ghetto Area are listed here without comment. No comment is made (except for brief, parenthetical comments) because it is believed that the pertinence of these statutes to the interests of the Ghetto Area is self-evident.

A. The Employment Security Act being a subject of constant enactments, repeals and amendments: Acts 1947, ch. 208; 1951, ch. 295; 1953, ch. 1771; 1955, ch. 317; 1957, ch. 299, ch. 97; 1965, ch. 190 & 1967, ch. 310.

B. The minimum wage law, Acts 1935, ch. 319.

C. The Public Welfare Act, being a subject of constant enactments, repeals and amendments: 1936 (Spec. Sess.) ch. 3; 1937, ch. 41; 1945, ch. 347; 1947, ch. 200; 1951, ch. 288; 1955, ch. 227; 1959, ch. 373; 1961, ch. 315; 1965, ch. 430 & 1967, ch. 270.

D. The Election Apportionment law bearing upon General Assembly constituencies, being a subject of all too *in*frequent amendments: Acts 1921, ch. 271; 1965, ch. 430 & 1967, ch. 270.

E. The Small Loan Company statute: Acts 1917, ch. 125, 1933, ch. 154; 1951, ch. 86; 1963, ch. 233.

F. Statute governing city primaries and elections: Acts 1945, ch. 229; 1947, ch. 29; 1949, ch. 25; 1953, ch. 239; 1957, ch. 168; 1959, ch. 183.

G. Registration of Voters: Acts 1945, ch. 208; 1951, ch. 12; 1953, ch. 239; 1957, ch. 235.

H. The Marion County Health and Hospital Corporation statute and the free medical care and administration of such care provided for thereunder: Acts 1959, ch. 287; 1961, ch. 20.

I. The Building Regulations and Codes and Housing Codes statutes being: Acts 1921, ch. 225; 1923, ch. 168; 1925, ch. 125.

J. The thoroughfare Plan in Cities of the Firat Class (Indianapolis being the only such city) statute: Acts 1923, ch. 169; 1925, ch. 183; 1953, ch. 120.

K. The Free School Text Books and Regulation of Content statute: Acts 1889, ch. 50; 1891, ch. 80; 1907, ch. 273; 1909, ch. 156; 1913, ch. 190 & 234; 1917, ch. 138; 1921, ch. 68; 1935, ch. 105; 1939, ch. 85; 1943, ch. 249; 1945, ch. 243; 1953, ch. 36 & 1967, ch. 331.

L. Apportionment of state funds for education: Acts 1943, ch. 263; 1949, ch. 247; 1955, ch. 215; 1957, ch. 292; 1959, ch. 328; 1961, ch. 198.

M. Civil Rights and related legislation: Acts 1885, ch. 47; 1947, ch. 56; 1961, ch. 256; 1961, ch. 208; 1963, ch. 173; 1965, ch. 368.

N. Income Tax exemptions & credits: Acts 1933, ch. 50; 1937, ch. 117; 1943, ch. 291; 1959, ch. 375; 1963 (Spec. Sess.) ch. 30; 1965, ch. 232.

MEMORANDUM 8

THE GHETTO AREA'S INHABITANTS DO NOT LIVE THERE VOLUNTARILY. THE MAJORITY OF THE POPULATION AND THE GOVERNMENT AGENCIES OF MARION COUNTY HAVE ACTED AND CONTINUE TO ACT OUT OF MALICE TO CAUSE MARION COUNTY TO BECOME AND REMAIN A SEGREGATED COMMUNITY

In the 1920 and 1930 United States Censuses, the City of Indianapolis, Indiana which contains all of the Ghetto Area as alleged and defined and which contains most of the population of Marion County, was divided into 15 wards. As of the 1920 census all of these wards contained negro inhabitants. The ward containing the most negro inhabitants contained a total of 5079 such inhabitants and the ward containing the least negro inhabitants contained a total of 380 such inhabitants. Also, as of the 1920 census there were nine wards containing one thousand or more negro inhabitants which had a total of 31,479 such inhabitants while the remaining six wards contained a total of 3199 such inhabitants. As of the 1930 census there were 9269 additional negroes in the City of Indianapolis and this entire increase took place in the nine wards having more than one thousand negro inhabitants as of the 1920 census. The negro population of these wards, as a whole, increased in the amount of 29.48% while the negro population in the remaining wards decreased slightly. By the time of the 1930 census the aforesaid ward with the largest number of negro inhabitants increased from 5079 to 7002 negro inhabitants while the aforesaid ward with the smallest number of negro inhabitants increased only from 380 such inhabitants to 383 such inhabitants. This change in the pattern of distribution of the negro population in Marion County, Indiana coincided with and was caused by the rapid growth of the Twentieth Century Ku Klux Klan and similar organizations who instigated and encouraged hatred of and fear toward negro and other ethnic minorities. The result of these activities by the Ku Klux Klan and other similar organizations was that otherwise respectable white citizens and neighborhood and civic organizations joined in activities calculated to keep negro housing in Marion County segregated.

> The rapid increase in Negro population created new tensions, especially in housing. The parts of the city which had been the Negro districts simply could not house both the older residents and the newcomers. As immigrants from the South took over these districts, older residents sought to buy homes in hitherto all-white neighborhoods. The largest concentration of Negroes in Indianapolis had always been just northwest of the down town business area. After the war this area began to expand northward —toward the upper middle class white neighborhoods. Property owners, faced with the prospect of Negro neighbors and fearful of a decline in real estate values, organized themselves into local civil leagues, which had as their chief purpose the barring of Negro residents. One novel defice to which one group, the Capitol Avenue Protective Association, resorted was to try to isolate and humiliate Negroes who bought property by building spite fences on either side of his property. But a young Negro dentist, faced with this form of retaliation, obtained an injunction which prohibited the practice.
>
> Sometimes opposition to Negro neighbors took a more sinister form. When, despite warnings, a Negro family moved into a white neighborhood in 1924, a hand grenade was thrown through a window of their

house. Following this episode handbills were circulated in an adjacent neighborhood asking "DO YOU WANT A NIGGER FOR A NEIGHBOR?" The handbills appear to have been the work of a group which unabashedly called itself the White Supremacy League and which had as its objective not only barring Negroes from white neighborhoods but excluding them from most forms of employment as well. Members were bound by oath not to employ Negroes in their homes or trade at stores which employed Negroes. This group represented an extremist element, but its president was also active in the Mapleton Civic Association, an organization which included in its membership eminently respectable businessmen. A printed statement of the aims of the Mapleton group frankly stated: "One of our chief concerns is to prevent members of the colored race from moving into our midst, thereby depreciating property values fifty percent or more." Members of the association pledged themselves not to sell or lease property to anyone except a white person. The agreement was reported to have worked so well that for three years no more Negroes had moved into the Mapleton area, and some who were already residents had moved away.

Segregation In Indiana During the Klan Era Of the 1920s, Miss. Val. Hist. Rev. Vol. XLVII, No. 4, M., 1961, pgs. 597, 598, Thornbrough.

The following excerpt from an issue of The Freeman, a "National Negro Newsweekly" which was published in Marion County, Indiana during the first part of this century is self-explanatory:

SEPARATE HIGH SCHOOL PROVES OLD PLOT

Mapleton Civic Association Boasts of Solon's Pledge

Would "Help Make a More Beautiful City" By "Lilly White" Colonization

In a booklet edited by Edward C. Snethen, under the caption of "The Indianapolis Federation of Civic Clubs, 1923, we find this illuminating report of the activities of the Mapleton Civic League.

Mapleton Civic Association

The present officers of the Association are as follows:

George W. Beamon, president, 3815 N. Capitol Avenue.

J. G. Bowen, vice president, 3824 N. Illinois St.

Nannie Moffitt, secretary, 3950 Kenwood Avenue.

Ray Mock, Treasurer, 3749 Graceland Ave.

* * * *

The Mapleton Civic Association was organized in 1920 with a membership of 360.

The purpose of this organization is to give protection to all property holders within its boundary lines.

As this is strictly a residence district we have no railroad nor factory problem, but one of our chief concerns is to prevent members of the colored race from moving into our midst, thereby depreciating the property values fifty percent or more. For this reason each member of the association has pledged himself not to sell or lease property to other than white persons, consequently some negroes have moved out and none have moved into the district since we organized. Through our efforts the School Board has promised to provide separate schools for the colored pupils of the city, especially a high school this season, and we believe this will be assistance in segregating these people.

This association has done a great amount of work toward securing Fairview Park for Butler College. Most of the members have donated money toward the park for the college.

We are striving to make this territory a better place in which to live, particularly a place morally and in every other way, safe for the rearing of our children into better men and women.

We are lending the Federation of Community Civic Clubs all the assistance possible as we feel that it has accomplished wonders in advocating and carrying through measures that are of lasting benefit to our city.

The association meets the first Tuesday of each month at the Community Building, corner of 40th and Capitol Avenue.

It seems that the cat is out of the bag and all the high sounding reasons given by the school commissioners to the colored committees protesting against the establishing of a high school were just so much camouflage to hide the real issue. The booklet goes on to name the various civic organizations federated under one banner and then follow these remarkable ideals:

> "To Co-ordinate Community effort
> To encourage a more useful citizenship
> To co-operate in escuring (sic.)
>   better public service
> To help make a more beautiful city.

The Freeman, A National Illustrated Colored Newspaper, March 1, 1924 page 1.

These activities received the sanction and assistance of the local government in Marion County when, in 1924 the

Zoning Board prohibited a negro church from being erected in an integrated neighborhood:

> ### WHITE RESIDENTS OUST COLORED CHURCH
>
> Claim Presence Will Depreciate Property
>
> — o —
>
> Board Refuses Permit to
> Build to Zion Methodists
>
> Once more Jim-Crow-come-North scored in Indianapolis when the board of zoning appeals denied a petition presented by a congregation of St. Mark's A.M.E. Zion Church to erect a new church structure at the northeast corner of Palmer and Olive Streets.
>
> Members of the neighborhood property owners appeared before the board complaining that the—(Missing from Indiana Historical Library copy)—would depreciate the evalue (sic) of their property. Most of the residents of this neighborhood are white.
>
> It is considered of marked significance that this refusal should be handed down at the time of the General Conference of the A.M.E. Zion Church in the City. Just what steps of prosecution the church congregation will take on whatever their—(balance of article missing.)
>
> *The Freeman, A National Illustrated Colored Newspaper,* Indianapolis, May 17, 1964, pg. 1

In 1926 the City Counsel of Indianapolis enacted a separation of the races orginance prohibiting negroes from moving into mostly white neighborhoods and prohibited whites from moving into mostly negro neighborhoods:

> General Ordinance No. 15, 1926
>
> **AN ORDINANCE**, relating to the establishment by white persons of a home-residence in a negro com-

munity, and the establishment by negroes of a home residence in a white community, providing a penalty for the violation thereof, and declaring a time when the same shall take effect.

WHEREAS, In the interest of public peace, good order and the general welfare, it is advisable to foster the separation of white and negro residential communities,

Therefore.

Be it Ordained by the Common Council of the City of Indianapolis, Indiana;

Section 1. That it shall be unlawful for any white person to hereafter establish a home-residence on any property located in a negro community, a portion of the municipality inhabited principally by negroes, or for any negro to establish a home residence on any property located in a white community or portion of the municipality inhabited principally by white people, except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city to be affected; the aforesaid written consent to be filed of record with the city clerk.

Provided, however, that a White person owning property in a colored community or a colored person owning property in a white community, before the passage of the ordinance may exercise his or her vested right to hereafter move into and reside there without obtaining the consent of a majority of the persons of the opposite race occupying such community. Provided further, that a white person may exercise his vested right to sell his property in a negro community to a white person, but the purchasor in either case after the passage of this ordinance cannot take up his residence therein without first obtaining the written consent of a majority of the citizens of the other race inhabiting such community, as hereinbefore provided.

> *Section 2.* That it shall be unlawful to maintain any home-residence established in violation of Section 1 of this ordinance.
>
> *Section 3.* That each seven (7) days maintenance of any home-residence established in violation of Section 1 of the ordinance shall be deemed to be and shall constitute a separate and distinct offense.
>
> *Section 4.* That the terms 'white community' and 'negro community' as used in this ordinance shall be taken and held to mean and embrace every residence fronting on either side of any street within three hundred feet of the location of the property involved, measuring along the middle of the streets in any and all directions.
>
> *Section 5.* That any person violating any of the provisions of this ordinance shall on conviction be punished for each offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and such imprisonment, in the discretion of the court having jurisdiction.
>
> *Journal of the Common Council of Indianapolis* 1926, pp. 53-54 (enacted March 15, 1926, see p. 78)

During the year 1924 the Indianapolis School Board reached its decision to erect an all-negro high school and prohibit negro children from attending other high schools regardless of the distance of their homes from the all-negro high school and the proximity of their homes to other schools. An injunction against this action by the School Board was sought and when a demurrer to the complaint was sustained the matter was appealed to the Indiana Supreme Court which upheld the "constitutionality" of this deliberate administrative act of achieving segregation in housing through indirect means.

COURT UPHOLDS JIM-CROW RULING

Action To Block New High School Fails. Judge Mull in Handing Down Decision States Segregation of Colored School Children is Legal—To Appeal Case

Following the filings of a suit against the school board by Archie Greathouse to prevent the erection of a colored high school, the school pled a demurrer through their counsel which was sustained by Judge Moll of the Superior Court last friday.

Judge Moll — (missing from the Indiana Historical Library copy) — are immaterial and the courts may not interfere with courses of study prescribed consistently to law." He held that Mr. Greathouse did not state a cause of action.

In his complaint, Mr. Greathouse raised the issue that more money was spent for other schools than is planned in the erection of a colored high school, that the courses of study would not be equal and otherwise attacked the discrimination of the school board.

Mr. Greathouse was not in the city at the time the decision was rendered by Judge Moll, but his attorney stated that he was positive his client would renew his attack on this discriminatory measure. Mr. Greathouse is represented by Attornew (sic.) Henderson.

The Freeman, A National Illustrated Colored Newspaper, Indianapolis, May 24, 1924, page 1

Mr. Greathouse's case was affirmed on appeal: *Greathouse v School Board,* (1926) 198 Ind. 95-107.

Also in the nineteen twenties, in 1927, the General Assembly of Indiana abandoned its duty under the Constitution of Indiana to reapportion the legislature every six years. This took place partly because of the increase in the number of negro and white-ethnic inhabitants in metropolitan areas. This abandonment of the General Assembly's duty under the Constitution of Indiana continued until 1965 when action by the federal courts appeared imminent and after an election which featured a strong public response in favor of civil rights had resulted in a General Assembly sympathetic to such interests. Between 1927 and 1965 attempts at accomplishing legislative reapportionment repeatedly were rebuffed, frequently with the cooperation of Assemblymen elected from Marion County, Indiana whose personal base of popular support was solely outside the above-alleged Ghetto Area and other ethnic areas in Marion County and whose supporters had economic and social interests similar to those of the inhabitants of the smaller counties which dominated the General Assembly.

Another result of the objected to "at large" provisions in the questioned statutes (and the alienation of the Ghetto Area which has taken place under the political structure fashioned by the said statutes) has been that of causing quasi-political groups to form among the inhabitants of the Ghetto Area and of causing such quasi-political groups to operate outside the elective process and to seek redress of their grievances by threats, by civil disobedience and by various resorts to the bizarre in order to focus public attention on the said grievances. This is no new development. The current hostility of Marion County negroes toward our "main-stream foreign and domestic politics actually predates the turn of this century:

> Negroes showed little interest in national political issues except those which had a distinct racial appeal. Although colored orators and newspapers might discuss the issues which divided the political parties, their interest in such matters as the tariff or bi-metalism seemed perfunctory. Indiana Negroes

were aroused over the increasing number of outrages in the south and the movement to disenfranchise Southern Negroes but under Harrison and McKinley they became increasingly distrustful of the Republican Party because of its acquiescence in conditions in the South. Their feelings of disillusionment and alarm over the future of their race were growing at the end of the century as the result of the aftermath of the war with Spain. Negroes had hailed the war to liberate Cuba and had enthusiastically volunteered for service because many of the Cubans were persons of "Colored" blood. But as the fighting in the Phillippines more and more to assume the aspects of a race war, it became increasingly distasteful to Negroes. The Indianapolis Work declared: "Negroes of America ought to stand as a man against the effort to conquer the Phillipinos (sic) and force upon them an alien colonial government." Moreover, racial prejudice in the United States seemed to be accentuated by the war. The subjugation of a colored people overseas seemed to sanction doctrines of White Supremacy at home. Some of the opinions expressed by white Republicans to justify imperialism were similar to those used by Southern White Democrats to serve as an apology for their racial program.

As Negroes became disillusioned with white Republican leadership, white politicians were also becomming indifferent to the Negro vote, taking it for granted or even regarding it as a liability to the party. In 1896 the Republicans began a long period of control of State Government in Indiana during which the margin of their victories was a large enough one that they no longer felt it necessary to cultivate colored support. In 1898 and 1900 and thereafter Negroes were completely ignored in naming candidates for state office. In the Republican State Convention of 1900 there were fewer Negro delegates than for many years. The humanitarian interest in the advancement of the colored race, or

> heritage of the abolition movement which had infused the Republican Party in an earlier period, was dissipated by the end of the century. In Indiana, as well as in the South, there was a 'lilly white' movement developing within the party. An editorial in the Indianapolis News on the subject of alleged buying of Negro votes by the Democrats in the 1899 mayoralty election was disparaging to both Southern and Northern Negroes. It asked: "Have they (Negroes) ever thought that people who have not the courage to exercise their rights in the South, even in the communities where they have a majority, and who are looked upon in the North as being particularly susceptible to the wiles of the scoundrels who purchase votes, must necessarily be regarded with some distrust by their white neighbors?"
>
> *The Negro in Indiana Before 1900*, Emma Lou Thornbrough, Indiana Historical Bureau, 1957, pgs. 314-316.

The above-noted circumstances and conditions never have been acquiesced in by the inhabitants of the Ghetto Area and the continued disregard of their condition by the General Assembly has not been because the inhabitants of the Ghetto Area were silent, it has been because they were ignored. The dillution of their vote has at all times made their petitions for redress of their grievances a matter which a Marion County legislator could safely disregard and which a Marion County legislator probably would be well-advised to dis-regard in view of the number of Marion County constituents who probably would be hostile to the ends sought by all such petitions.

One of the most improper and harmful bills ever enacted by the Indiana General Assembly was that which made miscegination a felony. The previously quoted statistic showing a substantially higher percentage of illegitimate births among negro births (including mixed births) than among white births can be largely attributed to this statute and the social prejudice against mixed marriages which it sanctioned and fostered while remaining a part of the Criminal Code of Indiana long after it ceased to be considered an enforceable statute. This statute withstood all threats of repeal until only a short time before the United States Supreme Court finally was given the opportunity to declare the long recognized unconstitutionality of such long unenforced but nonetheless insulting statutes. This statute survived even after it became practically meaningless notwithstanding the fact that the people of the Ghetto Area had protested its existence from its very inception:

IN CONCLAVE

> It was carefully whispered among the colored men on Sunday and yesterday that at night there was "goin to be an indignation meetin." At the Colored Baptist Church and with its customary enterprise, the News dispatched a representative there, although it was impossible to learn upon what they intented to "indignate."
>
> . . . .
>
> The following petition, drafted by Mr. Russell was adopted.
>
> To the General Assembly of the State of Indiana:
>
> The undersigned citizens of Marion County in the State of Indiana, respectfully, but earnestly, petition your honorable body for the repeal of that section of your Criminal Code which makes it a felony for white and colored persons to intermarry.
>
> And the Hons. Thompson and Oliver, Senators, and Kimball, King, Johnson and Billingsley, Representatives, are requested to present this petition to their respective houses, and to use their votes and influence to secure the repeal of said section.

And as in duty bound, your petitioners will ever pray.'

Indianapolis Evening News, Tuesday, Jan. 14, 1873 Page 4, Col. 1.

MEMORANDUM 9

AN EXAMPLE OF THE SEVERE HARM BEING DONE TO THE GHETTO AREA BY AN UNSYMPATHETIC GENERAL ASSEMBLY IS THE "TAXATION-BY-TOWNSHIP & ADMINISTRATION-BY-COUNTY" WELFARE SYSTEM ESTABLISHED BY LAW.

Under the laws of the State of Indiana as enacted by the defendant, General Assembly there are departments of public welfare in each county which are to be administered by a county welfare board (Burns Ann. Stat. 52-1117) which is to be appointed by the Circuit Judge of each county (Burns 52-1118) who is elected county-wide. The county welfare board is charged with the administration of matters of great importance generally to negroes and poor persons including: a. assistance to dependent children, b. old-age assistance, c. service and assistance to handicapped, d. care and treatment of neglected or handicapped children and, e. supervision of the probation officers for the courts. Although this board is controlled at the county-wide level the taxes for welfare assistance are levied at the township level (Burns 64-1908). The entire Ghetto Area is within Center Township of Marion County and thus, while the Ghetto Area is required by the statutes enacted by the defendant, General Assembly to bear the financial burden of its own poor, the administration of poor relief is controlled by an official who is elected at large. This results in an administration of poor relief of Marion County which is hostile to the true needs of the Ghetto Area notwithstanding the fact that the Ghetto

Area is itself bearing its own, separate and dis-proportionate tax burden. Ghetto residents who seek poor relief are usually investigated instead of assisted and insulted instead of counseled. The poor relief administrators who are under the patronage of the county-wide elected circuit judge are prejudiced against negroes to the extent that they will not permit homeless negro children to be placed in white foster homes notwithstanding the willingness of certain prospective white foster parents to have such children and notwithstanding a chronic lack of foster homes for homeless negro children. In 1965, after an election which featured widespread voter sympathy for negro and civil rights causes, the defendant, General Assembly enacted a law which empowered the Mayor of Indianapolis to appoint a bare majority of the members of the county welfare board. Before the Mayor could make any such appointment he was enjoined from doing so by a county-wide elected superior court judge and the matter now is in an appellate limbo. It is very unlikely that the near future will include an election expressing voter sympathies such as those expressed in 1964 and it is very unlikely that the Ghetto Area will have the opportunity to be the beneficiary of such sympathies within the next decade. The only opportunity for the Ghetto Area to right such injustices as those outlined above through substantive legislation lies in the direct exercise of its voting power with respect to the General Assembly without the dillution inherent in multimember districting. Under single member districting the Ghetto Area would be in a position to provide safe seats for sufficiently militant and persistent legislators who could articulate the Ghetto Area's needs and apply appropriate political pressures on the basis of their prospective long tenure in office.

MEMORANDUM 10

THE GENERAL ASSEMBLY CONTROLS TAXING UNITS AND UNITS OF LOCAL GOVERNMENT ALMOST WITHOUT LIMIT.

The Indiana Constitution vests power in the General Assembly with the following sweeping terms:

> *Sec. 16. Power of each house.*—Each House shall have all powers necessary for a branch of the legislative department of a free and independent State.
>
> *Article 4, Section 16, Constitution of Indiana*

The Indiana Constitution makes no provision for city, township or county government other than to provide for the offices of County clerk, auditor, recorder, treasurer, Sheriff, coroner and surveyor (Article 6, Section 2) and to provide that no county of less than 400 square miles can thereafter be created and that no county of a lesser area can be further reduced in size. (Article 15, Sec. 7). There are no limitations on the powers of the General Assembly to control the shape of local government other than the foregoing. In view of this it is submitted that the defendant, General Assembly has absolute, autocratic control over the form of local government in this State and it is responsible for all inequities which arise therefrom.

MEMORANDUM 11

WITH SINGLE MEMBER DISTRICTING THE GHETTO AREA AND GHETTO VOTING AREA WOULD CONTROL THE NOMINATION AND ELECTION OF THREE MEMBERS OF THE INDIANA HOUSE OF REPRESENTATIVES AND ONE MEMBER OF THE INDIANA SENATE.

The 1967 Ghetto Voting Area includes approximately one fifth of the Marion County population entitling it to three delegates to the Indiana House of Representatives and more than one delegate in the Indiana Senate. Only the most blatant, pie-shaped gerrymandering cognizable under *Gomillion v Lightfoot,* supra, could deprive the Ghetto Area of such representation in the event of single member districting in Marion County. Any gerrymandering sufficiently subtle to avoid a successful cause of action against it in the state or federal courts would result, merely in a waste of votes for the gerrymandering party which could well be used elsewhere. With certain exceptions the 1967 Ghetto Area consists of Wards 1, 3, 4, 5, 6 and 23 which are clustered together at the center of the said county. To the southwest there are wards which, like the Ghetto Area, returned a heavy Democrat vote in the 1968 General Assembly election and so no dillution of the Ghetto Vote could be accomplished by a merger of an outside area with the Ghetto in that direction. Such a merger to the southeast would include Wards 2 and 9 which returned a 16.95% and 7.04% Republican margin in the 1968 General Assembly election. This merger, however, would include Ghetto Wards 1 and 23 which returned a Democrat margin of 18.45% and 81.63% respectively in said election and so such a merger would merely increase the scope of Ghetto voting influence rather than dilluting it. A merger to the north-east would pit wards 1 and 23 or wards 31 and 22 against the said Ghetto Wards. While wards 28, 31 and 22 returned Republican margins of 22.70%, 34.76% and 30.20% in the said election this would not equal the Democrat margins returned by the said Ghetto wards. This coupled with the fact that the Ghetto Area presently is expanding rapidly toward the northeast would militate against such a merger. To the north a merger would pit wards 22 and 20 which returned a Republican margin of 30.20% and a Democrat Margin of 10.44% respectively against Ghetto Wards 4 and 5 which returned Democrat margins of 29.84 & 68.86% respectively.

Added to the above figures is the fact that they are figures from an election which featured substantial voting apathy in the Ghetto area. Under circumstances giving the Ghetto a real voice in the outcome of an election, as would be the case in a General Assembly election with single-member districting, the Ghetto Vote would increase very substantially and any attempt at gerrymandering based upon recent voting statistics would backfire. In view of the foregoing it is claimed that multi-member districting is depriving the Ghetto Area of at least four delegates to the Indiana General Assembly which it otherwise would have if single member districting prevailed.

MEMORANDUM 12

THE GHETTO AREA, EVEN WHEN IT ENGAGES IN EXTREME BLOC VOTING, HAS ALMOST NO EFFECT OVER THE RESULTS OF AT-LARGE MARION COUNTY ELECTIONS. MULTI-MEMBER DISTRICTING AT LARGE, THEREFORE, DILLUTES ITS VOTE TO THE POINT OF NEARLY ELIMINATING IT.

In the 1968 Indiana Presidential Primary held on May 8, there were four major candidates before the voters of Marion County who were standing for the presidency. These included the now president-elect (at the time of the filing of this compaint), the late Senator Robert Francis Kennedy, Senator Eugene McCarthy and Governor Roger Branigin. In percentages the wards and precincts of Marion County, Indiana which are outside the Ghetto Voting area cast their total vote for these four candidates as follows:

Richard Milhous Nixon	51.43%
Senator Robert Kennedy	18.12%
Governor Roger Branigin	17.92%
Senator Eugene McCarthy	12.53%

Again in percentages, the wards and precincts of Marion County, Indiana which are within the Ghetto Voting area cast their total vote for these four candidates as follows:

Senator Robert Kennedy	62.43%
Governor Roger Branigin	21.33%
Richard Milhous Nixon	13.32%
Senator Eugene McCarthy	2.92%

The total Marion County vote including Ghetto and non-Ghetto voting wards and precincts was as follows:

Richard Milhous Nixon	43.97%
Senator Robert Kennedy	26.78%
Governor Roger Branigin	18.58%
Senator Eugene McCarthy	10.65%

The raw vote totals represented by the above-recited percentages were as follows:

	Nixon	Kennedy	Branigin	McCarthy
Ghetto Vote	4,828	22,632	7,732	1,062
Non-Ghetto	76,677	27,001	26,715	18,691
Marion County	81,505	49,633	34,447	19,753

In the campaign which took place prior to the above described primary vote, Candidate Nixon took a mainstream position expressing no substantial disagreement with the foreign and domestic policies of the incumbant administration but asserting that the country was in need of more competent management. Candidate Branigin ran as a stand-in for the incumbant administration and actively sought the support of potential Nixon voters, appealing to them to assist him in defeating Candidate Kennedy in the Democrat primary. Candidate McCarthy expressed substantial disagreement with the foreign and domestic policies of the incumbant administration but he made little, if any, mention of civil rights or negro rights. Candidate Kennedy, while expressing the same substantial disagreement with the foreign and domestic policies of the incumbant administration also made a very strong presentation in favor of negro rights and advancement and in favor of the advancement of the rights of poor people and on the evening of the Assassination of the Reverand Martin Luther King he appeared in the heart of The Ghetto Area and made a moving presentation to an assembled crowd comparing the assassination of the Reverend King with that of his brother, stating: "My brother too was killed by a white man." The result of the said campaigning was the above-demonstrated substantial Ghetto bloc vote in favor of Candidate Kennedy which bloc had no effect on the outcome of the said election in Marion County at large because of the size of Marion County in relation to the Ghetto Area and because the said negro bloc vote was largely cancelled out by an anti-negro rights vote that also exists in Marion County. With or without the Ghetto vote the order of finish of the said candidates in Marion County was Nixon, Kennedy, Branigin and McCarthy and with or without the Ghetto vote the order of finish in the Democrat primary was Kennedy, Branigin, McCarthy.

MEMORANDUM 13

WHILE THERE IS VOTER APATHY IN THE GHETTO AREA THE SAID AREA RESPONDS STRONGLY WHEN GIVEN THE OPPORTUNITY TO VOTE ON ISSUES RELEVANT TO ITS PARTICULAR INTERESTS AND TO CAST A MEANINGFUL VOTE THEREON.

In the Spring, 1968 presidential primary the Ghetto Voting Area voted at a rate of 34.26% of the population of the Ghetto Area while the remainder of Marion County voted at a rate of 25.10% of its population. In the Fall, 1968 presidential election the Ghetto Voting Area voted at a rate of 32.06% of the population of the Ghetto Area while the remainder of Marion County voted at a rate of 46.53% of its population. Thus the Ghetto voting rate was 136.49% of that of the non-Ghetto voting rate in the Spring, 1968 presidential primary but it was only 68.89% that of the non-Ghetto voting rate in the Fall, 1968 presidential election. The above figures are for total population and not voting population. Since there is a slightly greater proportion of minors in the Ghetto Area the result is to slightly exaggerate the overall voter apathy in the Ghetto Area and to understate the dramatic difference between the Ghetto Voting response in the Spring primary as opposed to the Fall election.

It is noted and granted that the above given votes-per-inhabitant statistics are unusual and that votes-per-eligible-voter statistics normally would be considered more appropriate. But it is submitted that the above-given statistics are the more appropriate in this case because they include an additional factor very pertinent to this case. Negroes and poor persons (as has heretofore been shown) have a higher percentage of ineligible voters (eg. minors and felons whose civil rights have not been restored) among their number than do other classes of people. Thus the Ghetto Area automatically has fewer votes-per-body yet all of the bodies, i.e. inhabitants in the Ghetto Area have equal if not greater need for governmental attention as compared to inhabitants outside the said area. Since apportionment normally is based upon the number of inhabitants and not the number of votes cast (at least for purposes of determining the size although perhaps not the shape of a district) multi-member districting as opposed to single member districting automatically causes a dillution of the voting power of those cognizable classes which contain fewer eligble voters, where such cognizable classes live close together in a geographic area cognizable by known landmarks which is large enough to be equal in population to what would constitute a single district if such multi-member district were changed to a single-districting system. This latter point is not a claim that multi-member districts are invidious per se. What is being said, rather, is that there automatically is a dillution of a minority's voting power in all multi-member districts which contain what are commonly called "ghettos" where the ghetto is of substantial size.

MEMORANDUM 15

THE THREE NEGROES WHO PRESENTLY ARE ON THE 23 MEMBER MARION COUNTY GENERAL ASSEMBLY DELEGATION ARE NOT REPRESENTATIVES OF THE GHETTO AREA.

In the fall election of 1968, Marion County residents cast ballots for the Indiana General Assembly and the Presidency of the United States. In the General Assembly election there were fifteen candidates from each of the two major parties for the Indiana House of Representatives. All fifteen of the Republican candidates were elected including the three negroes who were on the said party's slate. These three negroes were elected to the General Assembly by Republican Party support and not by the support of the Ghetto Voting Area. In the Ghetto Voting Area the said three negro candidates received 8128, 8609 and 7902 votes respectively or a total of 24,639 votes. Their losing white Democrat opponent with the least alphabetical advantage on the ballot received 26,295 votes from the Ghetto Voting Area or more than the three said Republican negro candidates combined. In the Perry Township ward the same three negro candidates received a combined vote of 52841 while the aforesaid white Democrat House of Representatives candidate with the least alphabetical advantage on the ballot received a vote of 8,262 or 15.63% of the combined vote received by the said three negro candidates. Thus the political fortunes of the said three negro Republican Candidates and the said Democrat candidate varied by a ratio of more than six to one between the Ghetto Voting Area and the Perry Township Ward. In the same election one George Wallace whose political philosophy was generally recognized as anti-negro and anti-civil-rights received 3.49% of the total vote cast for the presidency of the United States in the Ghetto Voting Area. The same George Wallace received 11.21% of the total vote cast for the presidency of the United States in the aforesaid Perry Township Ward. Thus the Perry Township Ward of Marion County gave the anti-negro presidential candidate, George Wallace more than three times the support he received in the Ghetto Voting Area while the said Perry Township Ward, on the same ballots gave the aforesaid three negro Republican candidates six times the support given them on the ballots cast in the Ghetto Voting Area. In Ward 16 of Marion County, Indiana, in the said 1968 fall election, the voters gave each of the aforesaid negro Republican Candidates approximately the same number of votes that were cast for the aforesaid white, Democrat losing candidate while the aforesaid George Wallace received 19.89% of the total presidential vote, the largest percentage he received in any ward of Marion County and more than five times the support he received in the Ghetto Voting Area. In the same election, Presidential candidate, Hubert Humphrey, who had over a period of more than two decades, been a strong spokesman for Negro and civil rights, received 73.07% of the vote cast in the Ghetto Area for the Presidency of the United States while each of the three aforesaid Republican Negro candidates received not more than 24.66% of the said Ghetto Voting Area vote. In the Perry Township Ward of Marion County, Hubert Humphrey received only 26.08% of the Presidential vote while the said three negro Republican candidates each received a minimum of 68.86% of the General Assembly vote cast. Thus Hubert Humphrey received two and one half times the support from the Ghetto Voting Area that was given any of the three Republican Negro Indiana House of Representatives Candidates by the said Voting Area and he received the exact opposite degree of support in the Perry Township Ward as compared to the said negro candidates, all of whom received two and one half times the percentage of support given Hubert Humphrey in said ward. Because of the foregoing facts it is hereby and herein claimed that the bloc vote hereinbefore noted in the Ghetto Area is not a black, racist vote. It is, rather, a vote based upon a political philosophy which has arisen out of true and practical needs. Because of the foregoing facts it is hereby and herein further claimed that the said bloc vote is automatically frustrated when it is confronted with a nameless and practically invisible slate of fifteen Indiana House of Representative Candidates and eight Senatorial candidates whose individual propensities and political philosophies are submerged in a county-wide party platform which constitutes a melting pot of pre-arrainged political bargains on the part of the political party leaders of Marion County to achieve a ticket-wide, county-wide presentation calculated to include a sufficient percentage of centrist tendancies to acquire maximal support from the independent voters of the said county. Because of the said circumstances the plaintiffs herein complain that they, as inhabitants of the Marion County multi-member Indiana General Assembly constituency, are unable to obtain the state-legislative representation available to the single-member constituencies of this state.

In the May 8, 1968 Indiana Primary the three Marion County negroes who now are among defendant's membership ran in the state representatives Republican primary with numerous other candidates for the 15 representatives seats which were at stake in the Marion County District. All three of the said negro candidates were on the Republican Party Slate. Defendant's member, Representative Harriet Bailey Conn is a negro woman who ran in said primary on the Republican Party Slate and defendant's member, Representative Doris Dorbecker is a white woman who ran in said primary on the same Republican Party slate. Both of the said woman candidates had about the same alphabetical advantage on the said ballot and the number of votes which each received in each ward of Marion County in the said primary and the difference in the number of votes they received in each ward in terms of raw vote and percentage was as follows:

Ward	Conn Vote	Dorbecker Vote	Difference	Difference %
1st	784	873	—89	—3.34%
2nd	686	742	—56	—3.22%
3rd	160	156	+ 4	+1.26%
4th	692	737	—45	—3.22%
5th	274	246	+28	+8.72%
6th	166	138	+28	+9.21%
7th	304	299	+ 5	+ .82%
8th	408	435	—27	—3.33%
9th	1187	1308	—121	—4.87%
10th	606	669	—63	—4.94%
11th	290	289	+ 1	+0.017%
12th	164	177	—13	—0.37%
13th	585	646	—61	—4.95%
14th	332	346	—14	—2.05%
15th	143	162	—19	—0.62%
16th	616	673	—57	—4.42%
17th	453	471	—18	—1.94%
18th	1623	1728	—105	—3.73%
19th	398	412	—14	—1.72%
20th	1364	1396	—32	—0.011%
21st	3471	3704	—233	—3.24%
22nd	1688	1823	—145	—4.12%
23rd	163	147	+16	+0.55%
24th	376	381	— 5	—0.06%

Ward	Conn Vote	Dorbecker Vote	Difference	Difference %
25th	1013	1112	—99	—0.42%
26th	416	502	—86	—9.35%
27th	2198	2374	—176	—3.85%
28th	2173	2369	—196	—4.31%
29th	2223	2375	—152	—3.33%
30th	695	788	—93	—0.68%
31st	763	789	—26	—1.67%
32nd	224	233	— 9	—0.19%
Cent. Out	200	228	—28	—6.25%
Decatur	624	718	—94	—0.79%
Franklin	582	672	—90	—7.18%
Lawrence	2646	2925	—279	—4.89%
Perry	4772	5604	—832	—8.01%
Pike	1191	1175	+16	+0.67%
Warren	3126	3365	—239	—3.68%
Wash.	7835	8334	—499	—3.08%
Wayne	3589	3813	—224	—3.02%
Total	51203	55334	—4131	Avg. 3.19%(±)

The highest vote which the aforesaid negro woman candidate received over her white woman co-candidate in any ward equaled 9.35% of the total vote cast for both of them and the highest vote which the aforesaid white woman co-candidate received over the said negro woman co-candidate in any one ward stated in percentage of the tital vote cast for both of them in that ward was 9.21% Instances where the disparity approached the above-noted highest disparities were unusual, the median disparity being 3.02%. On the basis of the foregoing it is alleged that individual General Assembly candidates are almost invisible to the Marion County Voter. This allegation is further supported in a following memorandum. It also is contended that these aforesaid negro candidates were not selected by their party as persons who probably would support negro causes. This contention is supported by the following:

NOTRE DAME DEAN RESIGNS STATE POST

The dean of the University of Notre Dame Law School has resigned from the Fair Employment Practices Commission with a bitter blast at Governor Matthew E. Welsh whom he accused of failing to keep promises, it was learned yesterday.

Dean Joseph O'Meara quit the commission over the issuance of an executive order by Welsh requiring non-discrimination by firms doing business with the state.

O'Meara contends the order is weak and nothing more than "an empty gesture."

He claimed the essential provisions of the order were eliminated before it was issued by the Governor.

"When I began work on the executive order which the Fair Employment Practices Commission approved and submitted to you on Oct. 18, 1961, I said to those who were collaborating with me that the proposed order would soon make clear whether you are really interested in civil rights. It has done exactly that," the dean said in his letter of resignation to Welsh.

"You talk a good civil rights program, but you are unwilling to do what must be done to effectuate the State's policy against non-discrimination in employment. You are not interested enough to act," O'Meara said.

The law school dean declared that Welsh had promised he would confer with him on any possible changes in the order.

"This promise you did not keep," he said.

"In place of the essential provisions which you eliminated from the order before issuing it, you substituted simply the language of the statute itself.

"What is accomplished by repeating the statute? Nothing, it is an empty gesture, as you know," O'Meara wrote.

In accepting the dean's resignation the governor apologized for failing to discuss the changes with O'Meara.

He said the changes to the order were worked out by the Attorney General's office.

"It was felt unwise at this early stage in the life of the new commission to differ or be at cross purposes with the Attorney General, and for this reason his, (the Attorney General's) recommendations were accepted, and I understand that the other members of the commission were in agreement," the governor wrote O'Meara.

Deputy Attorney General, Mrs. Harriette B. Conn who drafted the changes in the order, explained that the order O'Meara had proposed went far beyond the provisions of the 1961 law that established the F.E.P.C.

The dean's proposed order contained a stipulation that would have required firms doing business with the state to post signs throughout their plants stipulating that they will not discriminate.

She said this very provision was removed from the F.E.P.C. bill when the bill was approved by the legislature. The order also would have forced the firms to prove to the state that they were not discriminating rather than placing the burden on the Commission to investigate possible discrimination.

Attorney General Edwin K. Steers said that an executive order cannot contain civil rights provisions which the legislature sought to delete.

O'Meara said that Dean Leon H. Wallace of the Indiana University Law School, Alan T. Nolan of the Indianapolis Bar Association and two professors from the Notre Dame Law School assisted him in this proposed order.

> The Notre Dame dean charged that the Attorney General's unofficial opinion on his order "was very weak."
>
> *Indianapolis Star,* Jan. 18, 1962, pg. 1, col. 8.

In view of the foregoing it is submitted that there is no basis for asserting that the Ghetto Area and its interests can be said to have representation in the General Assembly merely because there are three negroes on the Marion County delegation to the General Assembly.

MEMORANDUM 16

THE WHITE SUBURBAN BELT IS SOCIALLY, ECONOMICALLY, POLITICALLY, AND GEOGRAPHICALLY COGNIZABLE AS AN INTEREST GROUP.

The said White-Suburbanite Belt has the following characteristics which distinguish it from the remainder of Marion County:

A. The median family income in the said belt is $7,667 while in the remainder of Marion County it is $6,106.

B. Although the said belt contains 31.68% of the population of Marion County, Indiana it contains 44.20% of the families in Marion County which have a family income of more than $9,000.

C. Although the said belt contains 31.68% of the population of Marion County it contains only 18.37% of the families which have a family income of less than $4,000.

D. The annual family income of the families in the said belt is 125.56% the family income of the families in the remainder of the County.

E. Although the said belt contains 31.68% of the population of Marion County it contains among its inhabitants, 38.68% of the college graduates in Marion County.

F. Although the said belt contains 31.68% of the population it contains among its inhabitants only 1.86% of the negroes who live in Marion County.

H. Although the said belt contains 31.68% of the population of Marion County it contains only 13.46% of the dwelling units built before 1939.

I. Although the said belt contains 31.68% of the population of Marion County it contains only 14.43% of the deteriorating or dillapidated houses in Marion County.

K. Although the said belt contains only 31.68% of the population of Marion County it contains 51.51% of the houses with more than one bathroom in the said county.

K. Although the said belt contains only 31.68% of the population of Marion County it returned 48.73% of the Republican vote cast in Marion County in the fall election of 1968.

(All except the last of the given statistics are taken from the 1960 census. This latter fact detracts from the significance of the last given statistic.

MEMORANDUM 17

UNDER SINGLE-MEMBER DISTRICTING THE WHITE SUBURBAN BELT WOULD ELECT FIVE REPRESENTATIVES TO THE INDIANA HOUSE OF REPRESENTATIVES AND TWO SENATORS TO THE INDIANA SENATE AS ITS VOTERS WOULD BE ABLE TO RECOGNIZE AND DEFEAT IN THE PRIMARY ANY REPUBLICAN SLATED CANDIDATES WHO WOULD NOT MAKE SUITABLE REPRESENTATIVES. UNDER MULTI-MEMBER DISTRICTING THEIR VOTE IS DIL-

LUTED AND THE BELT IS AT THE MERCY OF A PARTY ORGANIZATION OVER WHICH IT HAS A LESS THAN PROPORTIONATE AMOUNT OF CONTROL.

Although, because of its said characteristics and because of the voting response of its inhabitants to their felt needs, the said White-Suburbanite Belt returned almost one half of the Republican vote cast in Marion County in the fall election of 1968, and although the said belt regularly casts similar strong Republican votes and although the vote of the said belt is necessary to most Republican victories which take place in Marion County, Indiana and although the said belt is proportionally entitled to five representatives in the Indiana House of Representatives and two Senators in the Indiana Senate, the inhabitants of the said belt, because of the complained of statutes and other usages described hereinafter, are effectively deprived of any substantial voice in the selection of the fifteen member Marion County delegation to the Indiana House of Representatives and the eight member Marion County delegation to the Indiana Senate.

Each major party in Marion County produces a slate of recommended candidates prior to each primary election and the selection of this slate is controlled by the County Chairmen of each party and the precinct workers of each party. Such slates can be beaten in the primary only by rival slates in times of intra-party upheaval. It is virtually impossible for an individual candidate to be nominated to the Indiana General Assembly in the Marion County primary election if he is not slated. Because of this the inhabitants of the White-Suburbanite Belt, while they regularly return approximately one half of the Republican vote in Marion County, they have less than one fourth of the actual voice in the selection of General Assembly candidates for the Republican slate which selection controls the actual nomination and they are left with no real voice other than a vote for or against the said slate on a take-it-or-leave-it basis and their vote and voice in the Indiana General Assembly is thus invidiously dilluted.

This latter dillution takes place largely because of the following statute:

> 29-2903 *Time and place of organization of party committees.*—At one o'clock p.m. on the Saturday following their election, the precinct committeemen and the vice-committeemen of each party coming under the provisions of this act pertaining to primary elections shall meet at some place at the county seat to be fixed by the retiring chairman, and shall organize the county committee by electing the officers required by this article. The state central committee of each political party coming under the provisions of this act shall provide, by proper rules, regulations or resolutions, for the organization of other committees herein provided for, which organization shall take place within one hundred twenty (120) days after such primary, except the city committees of such parties, which shall be organized at any time not later than sixty (60) days before the city primary, the time of such organization to be fixed by such state committees, and to be uniform as to each party throughout the state, and said state central committees shall adopt proper and efficient rules for the government of each and all of such committees.
>
> (Acts 1945, ch. 208, sec. 6, p. 680; 1949, ch. 25, sec. 3, p. 43; 1965, ch. 261, sec. 2, p. 683.)

Thus, each precinct, regardless of whether it is heavily Republican, heavily Democrat, or evenly divided, casts two votes at each party organization convention. There are 661 precincts in Marion County, Indiana. 206 of them are in the White Suburban Belt and 84 of them are in the Ghetto Voting Area.

Thus, while the Ghetto Voting Area cast 30.67% of the total Democrat vote cast in the 1968 Presidential primary the said area was able to elect and send only 11.19% of the delegates to the party organization convention the following Saturday and while the White Suburbanite Belt cast 48.73% of the Republican votes cast in the Fall, 1968 election in Marion County it was able to elect and send only 31.16% of the delegates to the 1968 Republican organization convention. Conversely, both areas contain "rotton burroughs" in the party which they do not support and which largely are under the control of the County Chairmen.

MEMORANDUM 20

THE COMPACT SIZE OF MARION COUNTY INDIANA DOES NOT PROVIDE A RATIONAL BASIS FOR THE MULTI-MEMBER DISTRICTING THEREOF. THE POPULATION OF MARION COUNTY IS FAR MORE HETEROGENOUS THAN A MUCH LARGER THIRTY SIX COUNTY AREA TO BE FOUND IN SOUTHERN INDIANA WHICH HAS A TOTAL POPULATION SIMILAR TO THAT OF MARION COUNTY.

Marion County, Indiana occupies a very small portion of the State of Indiana but, comparatively, it has a very large portion of the state's population. The fact that Marion County's inhabitants necessarily live very close together has not made them a homogenous group politically. Marion County is divided into 41 voting wards and there is as much of a variation in political preference among these wards as there is among any equally populous group of single member constituencies as could be found in the State of Indiana, however large in geographic size. In the fall, 1968 election the Republican Party won a very substantial victory in Marion County. The first alphabetically listed Republican candidate for the General Assembly House of Representatives achieved a margin of 15.77% of the total vote over the first alphabetically listed Democrat candidate for the said House. Stated in raw figures this margin amounted to a total of 47,331 votes. But notwithstanding the said Republican landslide on a county wide basis, the aforesaid Democrat candidate achieved a very substantial voter margin over the aforesaid Republican candidate in many wards of this County:

Ward	Rep. Cand.	Dem. Cand.	Raw Margin	% Margin	Safe?
1st	2993	4360	1367	18.45%	DS
2nd	2311	1641	670	16.95%	R
3rd	488	4024	3736	80.58%	DS
4th	1791	3297	1501	29.86%	DS
5th	809	4384	3575	68.84%	DS
6th	548	6127	5579	83.59%	DS
7th	840	2450	1610	48.91%	DS
8th	1215	1286	71	2.83%	D
9th	4052	3171	881	7.04%	R
10th	2347	2641	294	5.89%	D
11th	1073	1521	282	21.12%	DS
12th	675	2538	1863	57.98%	DS
13th	2198	2699	501	11.86%	D
14th	1165	1010	155	8.04%	R
15th	535	1005	470	30.51%	DS
16th	2256	2472	212	45.70%	DS
17th	1774	2862	1088	23.46%	DS
18th	4700	2618	2682	28.42%	R
19th	1720	3283	1563	51.23%	DS
20th	3785	4668	1903	10.44%	D
21st	9087	2997	7090	50.39%	RS
22nd	4323	2266	2057	30.20%	RS
23rd	527	5212	4685	81.63%	DS
24th	1423	1407	16	.66%	R
25th	3280	2326	854	14.29%	R
26th	1485	898	587	20.52%	R
27th	7185	2907	4278	48.28%	RS
28th	7421	4679	2772	22.70%	R
29th	7385	4368	3017	25.69%	R
30th	2661	2277	384	7.77%	R
31st	2233	1081	1152	34.76%	RS
32nd	755	377	348	33.39%	RS
Cen. Out.	1042	914	128	6.54%	R
Decatur	3064	1706	1258	28.40%	R
Franklin	2573	1296	1277	33.00%	RS

Ward	Rep. Cand.	Dem. Cand.	Margin Raw	% Margin	Safe?
Lawrence	9048	3279	5769	47.35%	RS
Perry	17728	8295	9435	36.25%	RS
Pike	3365	1140	2225	49.39%	RS
Warren	10564	4854	5710	36.96%	RS
Wash	22501	8236	14265	46.41%	RS
Wayne	14754	7757	6997	32.08%	RS
Total	173678	126347		Avg. 32.87% Med. 30.20%	

The extremes in political preference shown by the above-listed wards are the 6th Ward wherein the Democrat margin over the Republican vote was equal to 83.59% of the total vote cast in the said ward and in Ward twenty one where the Republican margin over the Democrat vote was equal to 50.39% of the total vote cast. The closest vote occurred in the twenty fourth ward which was the only ward where the margin was less than one percent. The "average" margin of 32.87% which is listed at the bottom of the fourth column of the above chart is not the county-wide margin but the average of the various margins in the forty one wards. The Republican county-wide margin was 15.77%, less than one half the average margin among the wards. Looked at from another statistical viewpoint the significance of the 32.87% average margin figure is that in the typical ward of Marion County, one or the other of the major political parties achieved a two to one "victory" in the General Assembly race. Only nine of the forty one wards came within ten percent of the county-wide margin, that is, gave the Republican Assembly candidate a margin of not less than 5.77% nor more than 25.77% and only 16.30% of the total votes cast came from those said wards which showed some ressemblance to the county wide political preference. The heterogeniety of Marion County is so great that with single member districting more than one half of the fifteen Marion County seats in the Indiana House of Representatives probably would be among the so-called "safe seats" in the fall elections and the subject of serious contest only in the primary elections. In the fall, 1968 election the Democrat party's General Assembly candidate carried seventeen of the forty one wards in Marion County by an average margin of 39.57% of the total vote. Stated in other terms, the Democrat Assembly slate won seventy percent of the vote in those wards in which it was "victorious." 26.80% or four fifteenths of the total vote cast in Marion County was cast in these wards. These said Democrat wards are largely negro and largely contiguous and any reasonable single member districting of Marion County would result in these wards producing four "safe seats" in the Indiana House of Representatives. In the same fall, 1968 election the Republican General Assembly candidate whose votes are noted on the above chart carried twenty four wards and he carried twelve of them by an average margin of 40.71%. Stated in other terms, the Republican Assembly slate won seventy percent of the vote in those wards. 46.58% or seven fifteenths of the total vote cast in Marion County was cast in those wards. These said Republican wards are largely white suburbanite and largely contiguous and any reasonable single member districting of Marion County would result in these wards producing seven "safe seats" in the Indiana House of Representatives. These eleven "safe seats", seven Republican and four Democrat, would be safe only in fall elections between the major parties. Their incumbants would be subject to voter-scrutiny and voter-pressures in the spring primary election and free from voter-pressures and party pressures from outside the constituency. Where a single-member legislator would succeed in gaining the confidence of a substantial majority in one of the aforesaid bloc voting constituencies he would be able to go to the

General Assembly armed with voting statistics demonstrating the probability of his having a long tenure in office and his ability to reward allies and punish foes over a long period of time. In this manner, single member constituencies would enable the bloc voting portions of Marion County to give their representatives influence in the legislature proportionate to the needs which create those propensities in the same manner that those rural single-member constituencies which engage in bloc voting are able to arm their representatives. Among Marion County Democrat voters and the Democrat Party in Marion County, single-member constituencies would have the additional effect of giving the aforesaid Ghetto Area voters a dominant or near-dominant position in the Marion County Democrat Party during any period following successive defeats in general elections. The General Assemblymen elected by the Ghetto Area would, in such years be the only major spokesmen for the Marion County Democrat Party. This would not be an unconscionable advantage; it merely would be the natural result of the very substantial bloc voting support repeatedly given the Democrat Party by the Ghetto Area and there would be a similar but converse result should the Ghetto Area change, en mass, to supporting the Republican Party as it once did. Under the complained of statutes the Ghetto Area is prevented from obtaining and exercising such power because of the dissipation of its vote through the practice of holding multi-member, county-wide elections even though there is no rational basis for such an apportionment.

Marion County, Indiana has 699,567 inhabitants and occupies 402 square miles. There are thirty six counties in southern Indiana which are hereinafter listed on the chart which appears below and which have a total population of 707,510 inhabitants and which occupy 12,341 square miles or 30.7 times the area occupied by Marion County. In the

1968 fall election these counties cast their vote for Secretary of State as follows:

County	Pop.	Sq. Mi.	Repub.	Demo.	Spread	Result
Posey	19,214	414	4,715	4,726	0.00%	D
Warrick	23,577	391	5,711	5,408	2.72%	R
Spencer	16,074	396	4,659	4,106	6.31%	R
Perry	17,232	384	3,960	4,769	9.26%	D
Crawford	8,379	312	2,112	1,838	6.93%	R
Harrison	19,207	479	4,119	4,888	8.53%	D
Gibson	29,949	499	7,347	7,794	2.95%	D
Pike	12,797	335	3,052	3,388	5.23%	D
Dubois	27,463	433	4,912	7,838	22.94%	D
Orange	16,877	405	4,617	3,567	12.95%	R
Washington	17,819	516	3,909	3,383	7.21%	D
Scott	14,643	193	2,423	3,242	16.24%	D
Jefferson	24,061	366	5,554	5,196	3.33%	R
Switzerland	7,092	221	1,460	1,756	9.20%	D
Ohio	4,165	87	1,027	1,156	5.61%	D
Dearborn	28,674	306	5,577	6,244	5.55%	D
Ripley	20,641	442	5,126	4,871	2.55%	R
Jennings	17,267	377	4,193	3,641	7.04%	R
Jackson	30,556	520	7,314	6,249	7.85%	R
Lawrence	36,564	459	8,570	6,286	15.38%	R
Martin	10,608	345	2,390	2,746	6.93%	D
Knox	41,561	517	8,385	9,113	4.73%	D
Davies	26,636	433	6,861	4,884	16.83%	R
Sullivan	21,721	457	3,895	5,092	13.32%	D
Greene	26,327	549	6,239	6,386	1.24%	D
Owen	11,400	385	2,782	2,492	5.56%	R
Brown	7,024	324	1,853	1,701	4.26%	R
Decatur	20,019	370	5,436	4,114	13.85%	R
Franklin	17,015	394	3,101	3,045	.91%	R
Rush	20,393	409	4,966	3,092	23.13%	R
Fayette	24,454	215	5,436	5,590	1.31%	D
Union	6,457	168	1,643	1,181	16.53%	R
Clay	24,207	364	5,461	5,223	2.32%	R
Putnam	24,927	488	5,899	4,896	9.29%	R
Parke	14,804	451	3,688	3,109	8.52%	R
Fountain	18,706	397	4,861	4,252	6.66%	R
Totals Pop.	707,510	12,341	163,353	157,262	Avg. 8.15%	18R
36 Counties					Med. 5.91%	18D

The extremes in political preference shown by the above-listed counties are Dubois County which returned a 22.84% Democrat margin and Rush County which returned a 23.13% Republican margin, (the margin being the number of total votes cast divided into the difference between the two candidates as was the case with the Marion County table, supra.) This contrasted with the extremes among the wards of Marion County where the said extremes were 83.59% and 50.39% respectively. There were two of the thirty six counties which had a margin of less than one percent in contrast to the forty one wards of Marion County which contained only one such unit. The average margin among the above-listed counties was 8.15% or less than one fourth the average margin that obtained among the previously listed Marion County wards and, in further contrast to Marion County, the said average constitutes an understatement as to the homogeniety of the said thirty six counties because the median margin was only 72.51% of the average margin while the average margin in Marion County constituted no overstatement of its heterogeniety because the median margin therein was 94.92% of the average margin. The Republican thirty-six-county-wide margin in the said counties was 1.86%. In contrast to the previously listed Marion County Wards where 85.70% of the total votes cast came from wards where the result deviated more than ten percentage points from the overall result, only 33.13% of the inhabitants of the said thirty-six counties lived in counties where the local result deviated from the general result to that extent. On the basis of the foregoing it is asserted that there is no rational basis for the multi-member, at-large districting of Marion County in the apportioning of General Assembly seats. The geographic compactness of the General Assembly seats which exists in Marion County provides no such basis because there is a greater heterogeniety among the forty one various voting wards of Marion County than there is among the above-listed thirty six counties notwithstanding the fact that the said thirty six counties contain a number of inhabitants similar to the number of inhabitants of Marion County but over an area more than thirty times the physical size of Marion County. All of the above-listed counties are part of the single member constituencies of the State of Indiana, there being no multi-member constituencies among them. All of the inhabitants and voters of the said thirty-six counties, therefore, are able to exert a very substantial influence over their respective representatives in the Indiana General Assembly because of the relatively narrow margins of political preference which exist in the said counties.

MEMORANDUM 21

THE POLITICAL LEADERS AND INHABITANTS OF THE STATE OF INDIANA OUTSIDE MARION COUNTY ARE VEHEMENTLY OPPOSED TO ANY CHANGE WHICH MIGHT INCREASE THE POLITICAL POWER OF MARION COUNTY IN THE STATE.

There is a prejudice against Marion County which prevails in the other counties of this State. This prejudice exists among both the voters and the political leaders of the counties other than Marion County of this state and it is considered by and implemented by the said political leaders of the said other counties. Marion County contains more than one seventh of the citizens, inhabitants and voters of this state. The existence of the said prejudice is demonstrable by the fact that Marion County has been able to achieve far less than the election of its inhabitants to one seventh of the meaningful elective offices which are the subject of state wide elections. In the past 80 years, which marks the point at which Marion County achieved a demographically significant plurality among the counties of Indiana, twenty two men have been elected to serve twenty three terms as Governor of this State and only one of them was a resident of Marion County and he was elected as a blatant, outspoken, Ku Klux Klan candidate and not as a Marion County candidate. Since 1816, the year that Indiana was admitted to the Union, there have been 39 Lieutenant Governors of Indiana. Only one Lieutenant Governor of this state has been from Marion County. Since the enactment of the present Indiana Constitution in 1851, forty one individauls have served as Auditor of the State of Indiana and only two of these have been from Marion County. Since the enactment of the said present Indiana Constitution, thirty five men have served as Superintendent of Public Instruction in this state and only one of these has been from Marion County and he was elected in 1867. There are three other state-wide elective offices where Marion County has achieved substantial representation. Ten of the forty seven Treasurers in the history of this State have been from Marion County. Nine of the fifty one Secretaries of State in the course of this State's history have been from Marion County and seven of the Attorney Generals elected since the office was created shortly after the enactment of the present Indiana Constitution have been from Marion County. But all three of these latter offices, until very recently, were minor offices which provided neither the monetary renumeration nor the political power which would motivate a truly qualified prospective candidate for such office to undertake to devote full time to the duties of the said office and so Marion County inhabitants were often the only willing competent candidates. The fact that Marion County is the seat of government in this state has been the factor resulting in the ascendancy of Marion County inhabitants to the latter offices while the size and potential influence of Marion County has not been a factor. At all times since it achieved a plurality among the various constituencies of the State of Indiana, Marion County has been significantly incapable of achieving a proportionate representation among the state-wide elective offices in this state. On the basis of this it is asserted that there is an active hostility in the defendant, General Assembly against any measure, including single-member districting, which might enhance the political power of Marion County.

At all times since the enactment of the present Indiana Constitution in 1851 there has been in force and effect a constitutional provision requiring a state census and reapportionment of the Indiana General Assembly every sixth year. This requirement of the Constitution of Indiana has been observed only once as only one reapportionment in Indiana ever has taken place in the sixth year after a preceeding apportionment. There presently is no statute providing for the taking of such a census. The last such statute was repealed in 1961 and the last state census was taken in 1931, ten and not six years after the last preceeding apportionment. No reapportionment ever took place while this 1931 state census remained demographically meaningful or reasonably current. At almost all times until the recent intervention of the federal courts, apportionment in Indiana has been in a lawless state in which dominating factions deprived smaller factions of their voting rights. In 1857 an apportionment of the Indiana General Assembly seats went into effect which resulted from a Republican-Democrat rural coalition's efforts to weaken the urban areas of the state including Marion County. Marion County was severely under-represented.

> Elsewhere in this morning's Sentinel we present the apportionment of 1857, which will allow a comparison with the present inequity. It is sophistically claimed by the apologists of the present abominable piece of legislation that it is impossible to frame a bill that will suit all. Admitted; but a bill can be framed that will not affront the moral sense of the

whole people. With the exception of a single press, we have yet to see a journal that has given the measure any consideration, which does not stigmatize it as a criminal piece of legislation, the papers that represent themselves as exponents of the Republican party, taking the lead in the severity and earnestness of reproach and denunciation. The apportionment of 1857 was framed by Democrats, and on examination will be seen to fairly represent the two parties on the lines apportioned to the districts. Indeed, when the status of the whole vote for governor in 1854 is examined, it will be seen that the Democrats did not give themselves 100 votes to spare in some districts while in the majority the lines are made comfortably close. The district having a Senator on the least number of votes is Republican, Fayette and Union (2,726 votes). The Democrats giving a Republican Senator to so small a number of votes does not speak bad for them as to fairness. And the district having the largest number of votes (but one) is Democratic, Warrick, Spencer and Terry, 7,130, not so bad again, to give only one Democratic Senator to 7,130 votes, and a Republican Senator to a district of only 2,726 votes. Marion, in 1857, hadn't votes enough to have two senators, so obtained one Senator on 7,379 votes. The district having the highest number of votes comes under 6,200 and it is democratic.

Sentinel, Indianapolis, Jan 14, 1873, pg. 4, Col. 4 & 5. Then in 1879, 1891, 1893, 1895, 1897, 1903 and 1905, during a period of urban and Marion County ascendancy, there was a series of apportonments (many of them caused by rulings of the Indiana Supreme Court that the existing act was in violation of the voting rights of certain rural inhabitants) in which Marion County repeatedly was given more senators and representatives that it was entitled to. The last apportionment in which Mairon County was overrepresented took place in 1921.

Year	State pop.	M.C. pop.	M.C. % of state	Year of app.	No. of M.C. Sen.	No. of M.C. Rep.
1850	988,416	24,103	2.33%	1879	2+1*	5
1860	1,350,428	39,855	2.94%	1891	3+1=	6+1#
1870	1,680,637	71,939	4.27%	1893	3+1=	6+1#
1880	1,978,301	102,782	5.21%	1895	3+1=	6+1#
1890	2,192,404	141,156	6.43%	1897	3+1&	7+1@
1900	2,516,462	197,227	7.83%	1903	4+1$	8+1@
1910	2,700,876	263,661	9.77%	1905	4+1¢	8
1920	2,930,390	348,061	11.02%	1921	6	11+1″

* Shared with Hancock and Shelby counties
= Shared with Hendricks County
# Shared with Shelby County
$ Shared with Hendricks and Boone Counties
& Shared with Morgan County
@ Shared with Hancock County
¢ Shared with Morgan and Putnam Counties
″ Shared with Johnson County

In all except the first of the above-listed apportionments, Marion County, in sharing a senator or representative with another county, achieved more than its proportionate voting power in the Indiana General Assembly. At the time of the last of the above-listed apportionments, Marion County was in a major period of ascendancy in state politics. From 1916 through 1928 the office of Secretary of State was held by residents of Marion County and from 1926 through 1931 the office of State Treasurer was held by residents of Marion County while from 1925 through 1929 Marion County had its only Indiana Governor in this century. This final ascendancy of Marion County in state politics paralleled and was a part of the ascendancy of the Ku Klux Klan in Indiana politics under the leadership of one D. C. Stephenson. D. C. Stephenson personally dominated Indiana politics during the said Marion County ascendancy and his career ended in a sex scandal murder trial which shocked the entire state. As a result of the said lurid events which occurred in the course of the last ascendancy of Marion

County, Indiana as a major force in state politics, the political leaders and inhabitants of the other counties have had and do have a lasting distrust of any development which would favor the potential ascendancy of Marion County, Indiana in state politics. The partition of Marion County into single member districts would constitute such a development because it automatically would enhance its position in state politics by giving its various factions the opportunity and ability to return a substantial portion of its representatives and senators to the General Assembly for long periods of service notwithstanding county-wide shifts in party preference by which the said factions now cancel out the force of each other's vote. This presently existing phenomenom is demonstrated in the following memorandum.

MEMORANDUM 22

UNDER MULTI-MEMBER DISTRICTING, SHIFTS IN COUNTY-WIDE PARTY PREFERENCE OPERATE TO DIMINISH THE OVERALL EFFECTIVENESS OF MARION COUNTY'S LEGISLATORS

Marion County, Indiana shares the general tendancy of urban populated, multi-member constituencies in Indiana to have General Assembly delegations with less experience and seniority than the single member constituencies and this tendancy has a long history and the effect of same has been cumulative in its detriment to the interests and political influence of all of the voters and inhabitants of Marion County, Indiana and the Ghetto Area except those voters and inhabitants of Marion County, Indiana whose interests are in common with those of the majority of voters in rural Indiana and the rural dominated parts of Indiana. This detriment to the classes represented by the plaintiffs in this lawsuit is demonstrated by the following facts.

Historically in Indiana the multi-member constituencies in the General Assembly always have had less experienced representatives because the representatives of such constituencies are too anonymous to survive general voter shifts in party preference. The larger counties in Indiana historically have had more shifts in voter party preference. Between 1916 and 1934, sixty six of the ninety two counties shifted in party control at least once. These sixty six counties contained eighty two percent of the Indiana population. The other twenty six counties which did not shift in voter preference during that period represented only eighteen percent of the Indiana population. This rural eighteen percent had the advantage of being represented by the bulk of the experienced legislators in Indiana.

From 1925 through 1933 these constituencies which had 80% or more of their population in incorporated areas with more than 300,000 population were represented by General Assemblymen who had substantially less experience than the Assemblymen representing constituencies with eighty percent or more of their population in rural areas or in incorporated places of less than 5000 population:

	Assemblymen from heavy pop. urban area	Assemblymen from Rural Area
No experience	68.1%	41.0%
In 2nd session	23.4%	31.4%
In 3rd session	4.3%	14.8%
In 4th session	4.1%	6.6%
In 5th to 9th Session	1.6%	1.6%
10 or more sess. exp.	.3%	1.6%

The said historic trend has continued to the present day and during the past decade the said trend has become increasingly marked and Marion County has become unique in its lack of experienced legislators. The following chart depicts in percentages the number of experienced legislators on the house delegation of a. The single-member constituencies, c. the Marion County multi-member constituency, b. all multi-member constituencies and, d. all multi-member constituencies other than Marion County.

	SMCS	ALL MMCS	MARION C.	MMCS Exc. M.C.
1959	62%	79%	100%	70%
1961	58%	74%	100%	61%
1963	30%	40%	45%	52%
1965	68%	61%	100%	43%
1967	65%	50%	100%	26%
Avg.	56%	60%	85%	50%

The ephemeral quality of large, multi-member constituency delegations in legislative assemblies results not only from the tendancy toward more frequent shifts in party-voter-preference in the larger constituencies, it also results from the fact that the individual members of a multi-member delegation are unable to form their own following and their political life is thus at the mercy of the county chairman and differing pressures placed upon such county chairmen and changes in such county chairmen. In a large, multi-member constituency, the disapproval of a county chairman can cause almost certain defeat to the multi-member legislator in the party primary. Almost one-half of the above noted 1925-1933 attrition rate of General Assemblymen was caused by primary defeats, the number of defeated Assemblymen in elections being 77 house members and 20 senate members and the number of defeated Assemblymen in primaries being 57 house members and 20 senate members.

MEMORANDUM 24

THE MATTERS DEMONSTRATED IN MEMORANDA 22 AND 23 HAVE AN INVIDIOUS EFFECT UPON THE VOTING POWER OF MARION COUNTY VOTERS.

The aforesaid circumstances have an invidious effect upon Marion County voters in both major parties because inexperienced legislators are less able to propose and successfully sponser needed legislation than experienced legislators. This can be demonstrated by the fact that in 1965, Marion County elected five Democrat Senators who had not served during the preceeding session of the General Assembly. These senators were able to sponsor the enactment of 6.2 laws per senator. The average experienced senator in the General Assembly during the 1965 session was able to sponsor the enactment of 7.51 bills. While the success of no individual or small number of individual legislators at becomming the sponsor of subsequently enacted bills can be used as a valid measure of the effectiveness of such individual or small number of individual lawmakers, the legislative record of the entire Indiana Senate during the past decade provides enough instances to assure the cancelling out of all independent variables and to establish the claim that effectiveness has a positive correlation with seniority with statistical certainty.

	1959	1961	1963	1965	1967
Successful bills sponsored per experienced Senator	8.21	6.31	5.34	7.51	6.09
Successful bills sponsored per inexperienced Senator	5.00	3.00	3.50	5.22	5.03
Average number of successful bills sponsored per experienced Senator over decade				6.68	
Average number of successful bills sponsored per inexperienced senator over decade				4.31	

Not only did the said trend prevail overall; it prevailed in each individual session. It also has prevailed in the Indiana House of Representatives during the past decade. During the four sessions at which there had been a complete turnover of representatives in the Marion County House Delegation the Marion County House Legislative "Team" was able to achieve the enactment of only 24.38% of the bills it introduced while during the one session where there was only a 45% turnover of Marion County House legislators the Marion County House Legislative "Team" was able to achieve the enactment of 34.11% of the bills which its members introduced. This practical dillution of the Marion County vote exists and will continue to exist unless this Court as a court of equity provides the voters of this county with a redress of its grievances because the opportunity of the voters of this, Marion County, Indiana to ever obtain such redress in the Indiana General Assembly is almost non-existent.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK CHAVIS et al
Plaintiffs
vs.
EDGAR D. WHITCOMB,
as Governor of the
State of Indiana
Defendant

CAUSE NO. IP 69-C-23

PLAINTIFFS' REQUESTS FOR ADMISSIONS

Plaintiffs, by counsel, acting under Rule 36 of the Federal Rules of Civil Procedure, requests defendants, within 10 days after this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial or to deny same under oath.

Plaintiffs counsel, recognizing that some of the facts alleged in the complaint which the plaintiffs are seeking to have admitted come from obscure sources and it is represented that the source material which has led to the said allegations will be provided upon request.

1. That the questioned statutes, Indiana Acts 1965, (2nd Spec. Sess.) ch. 5, sec. 3, p. 18 and Acts 1965 (2nd Spec. Sess.), ch. 4, sec. 3, p. 15 are quoted correctly in pertinent part on page 3 of the complaint and they are the statutes in effect effecting the present state legislative districting of Marion County, Indiana.

2. That 1960 United States Census tracts 220, 501, 502, 503, 508, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 528, 529, 530, 531, 534, 535, 536 and 540 are contiguous tracts in Marion County, Indiana.

3. That the census tracts listed in Request for Admission No. 2, supra, are in a cluster which is bounded by the streets and other landmarks in the manner described in the first paragraph of Memorandum 4 on page 18 of the complaint if lines six and seven of the said paragraph were to be amended. The said lines six and seven of the said paragraph now read:

> "sylvania Avenue to 34th Street and then east on 34th Street to Keystone Avenue and then south on Keystone Avenue to 30th

And should be amended to read:

> "sylvania avenue to 34th Street and then east on 34th Street to Central Avenue and then south on Central to Fall Creek and then north east on Fall Creek to 34th Street and then east on 34th Street to Keystone Avenue and then south on Keystone Avenue to 30th. . . ."

And if so amended the said paragraph would correctly describe the boundaries of the 1960 Ghetto Area.

4. That the 1967 Ghetto Area described in the second paragraph of Memorandum 4 on pages 18 and 19 of the complaint corresponds closely to the Ghetto Voting Area described in Memorandum 6 on page 31 of the complaint.

5. That as of the 1960 United States Census the 1960 Ghetto Area described in requests numbered 2 and 3, supra, and in the parts of the complaint referred to therein contained 105,808 inhabitants including 75,221 negro or non-white inhabitants and about 30,587 white inhabitants.

6. That as of the 1960 United States Census the aforesaid 1960 Ghetto Area was about 71.09% negro or non-white give or take one percent as opposed to Marion County as a whole which was 15.18% (give or take one tenth of one percent) negro or non-white as of the 1960 census.

7. That the ignoring of the differences between "non-whites" and "negroes" as those terms were used by the 1960 Census and the using of census figures applying to each of the said groups interchangeably cannot create an error of as much as one percent in any Marion County, county-wide 1960 census figure.

8. That the voting precincts and wards of Marion County, Indiana that are listed in the paragraph numbered 2 on page 4 of the complaint form a cluster which is bounded by the landmarks recited in Memorandum 6 on page 31 of the complaint.

9. That as of the 1960 census the balance of Marion County, Indiana, outside the 1960 Ghetto Area consisted of only about 4.17% negro inhabitants.

10. That as of the 1960 census the aforesaid 1960 Ghetto Area contained 15.80% (give or take one half of one percent) of the inhabitants of Marion County, Indiana.

11. That the 1960 census showed the aforesaid 1960 Ghetto Area to contain about 40.45% of the dillapidated housing units in Marion County.

12. That the 1960 census showed the aforesaid 1960 Ghetto Area to contain about 29.12% of the Marion County population dependent upon public transportation to go to and from work.

13. That the 1960 census showed the aforesaid 1960 Ghetto Area to contain about 22.00% of the Marion County population housed in dwellings containing fewer rooms than inhabitants.

14. That the 1960 census showed the aforesaid 1960 Ghetto Area to contain 28.74% of the unemployed Marion County population.

15. That one half of the families of Marion County, Indiana interviewed during the 1960 census had a family

income of $6,609 and half of the said families had incomes of less than that figure.

16. That half of the negro families living in Marion County Census tracts with more than 400 such families had a family income of more than $4,390 and half of the said families had a family income of less than that figure.

17. That as of the 1960 census, 31.47% of the persons interviewed in that census who had four years or less of formal education and were living in Marion County, Indiana, lived in the 1960 Ghetto Area. (Persons under 25 not included in figure)

18. That as of the 1960 census, among the persons in Marion County, Indiana who were interviewed or otherwise covered in said census, the median years of education was 11.5 years. (Aged 25+)

19. That as of the 1960 census the median years of education for non-whites over 25 in Marion County, Indiana among those covered by the said census was 9.2 years.

20. That there is in Marion County, Indiana, primarily to the immediate and near south of Butler University, a community known as the Butler-Tarkington Community which has achieved racial housing integration in a peaceful and lawful manner to a degree seldom rivaled by any other initially middle-class-white community in the United States during the past twenty years.

21. That the aforesaid 1960 Ghetto Area contains only about 3.86% of the college graduates of Marion County, Indiana when census tracts 220, 503, 510, & 511 are abstracted from the said area (as of the 1960 census).

22. That a large number of persons connected with the census tracts listed in the immediate preceding request for admission are, (or were as of the 1960 census) white,

middle-class employees or graduate students of/at Butler University or the John Herron Art Institute.

23. That the map-diagram presented on page 22 of the complaint presents an accurate portrayal of the inward movement of the non-white population of Marion County, Indiana during the 1950-1960 decade and the same was prepared in good faith and not in contemplation of this lawsuit by the Community Service Counsel of Metropolitan Indianapolis on a base map furnished by the Metropolitan Planning Department of Marion County, Indiana.

24. That the map-diagram presented on page 23 of the complaint presents an accurate portrayal of the outward movement of the white population of Marion County, Indiana during the 1950-1960 decade and the same was prepared, not in contemplation of this lawsuit, by the Community Service Counsel of Metropolitan Indianapolis.

25. That the 2nd table appearing on page 24 of the complaint is a reasonably accurate portrayal of enrollment by race in the public schools of the City of Indianapolis as of June, 1965 as reflected by the records of the various public schools of Indianapolis as compiled by the Indianapolis Community Service Counsel.

26. That the first table appearing on page 24 of the complaint is a table prepared in conformity to the statistical records of the Health and Hospital Corporation of Marion County, Indiana relating to the fertility rate of whites and non-whites in Marion County and in Indianapolis, Indiana during the years 1960 through 1965 and that the said figures were compiled from said records by the Community Service Counsel of Metropolitan Indianapolis, Inc. not in contemplation of this lawsuit.

27. That negroes in Marion County, Indiana, as an interest group, and the Ghetto Area residents under all three

usages of the term "Ghetto Area" which appear in the complaint, have a strong and particular interest in school policy and school districting and school budgeting in Marion County.

28. That the defendant, Indiana General Assembly has complete control over the governmental structure of Marion County, Indiana except where such local governmental structure is specifically provided for by the Indiana Constitution.

29. That the table appearing on page 25 of the complaint is a reasonably accurate and reliable listing of the white and negro enrollment in each of the public high schools of Indianapolis, Indiana as of June, 1965 the said table having been compiled from the records of the Indianapolis Public Schools by the Community Service Counsel of Metropolitan Indianapolis, Inc.

30. That the first table appearing on page 26 of the complaint is a reasonably accurate and reliable portrayal of the infant mortality rate for whites and non-whites in Marion County, Indiana during the years 1960-1966 as obtained from the records of the Health and Hospital Corporation of Marion County and compiled by the Community Service Counsel of Metropolitan Indianapolis, Inc.

31. That the second table appearing on page 26 of the complaint is a reasonably accurate portrayal of the mortality rates for whites and non-whites in Marion County, Indiana during the years 1960-1966 as obtained from the records of the Health and Hospital Corporation of Marion County, Indiana and compiled by the Community Service Counsel of Metropolitan Indianapolis, Inc.

32. That as of July 1, 1964, 72% of the aid to dependent children cases in Marion County, Indiana involved negro children although negroes did not total much more than

the 14.07% percentage figure which was their proportion of the Marion County population as of the 1960 census.

33. That the table appearing on page 27 of the complaint is a reasonably accurate portrayal of the proportion of illegitimate births of white children and non-white children in Marion County, Indiana during the years 1950 through 1965 as reflected by the records of the Health and Hospital Corporation of Marion County, Indiana and as compiled by the Community Service Counsel of Metropolitan Indianapolis, Inc.

34. That the first table appearing on page 28 of the complaint constitutes a reasonably accurate and reliable compilation of the number and percentage of illegitimate births by color and age of mother in Marion County, Indiana during the year 1965 as reflected by the records of the Health and Hospital Corporation of Marion County, Indiana and as compiled by the Community Service Counsel of Metropolitan Indianapolis, Inc.

35. That the second table appearing on page 28 of the complaint constitutes a reasonably accurate and reliable compilation of the juvenile offenses, by race, in Marion County, Indiana during the year 1966 as reflected upon the records of the Marion County Juvenile Court as compiled by the Community Service Counsel of Metropolitan Indianapolis, Inc.

36. That during the year 1966 the juvenile offenses of negro youths in Marion County as opposed to white youths in said county tended to be more of the type that become felonies when committed by adults while the white juvenile offenses tended more to be of the sort that are misdemeanors when committed by adults.

37. That as of the mid-nineteen-sixties, about two/thirds of the juveniles who are placed on probation in Marion

County were being placed upon what the field of probation work generally describes as "informal" probation while such "informal" probation was utilized in the State of Indiana as a whole only in the cases of one/third of the statewide juveniles-on-probation and that this discrepancy between Marion County statistics and State-wide statistics is caused by the nature of the juvenile-probation facilities available in Marion County as opposed to the per capita facilities available elsewhere in Indiana.

38. That the chart appearing on page 29 of the complaint constitutes a reasonably accurate portrayal of population growth by color for Indianapolis, Indiana during the years 1835 through 1965 as compiled by the Research Department of the Community Service Council of Metropolitan Indianapolis, Inc.

39. That the percentage of negroes in Indianapolis, Indiana has increased steadily over the past century and it can be expected to increase steadily in the future.

40. That the table appearing on page 30 of the complaint constitutes a reasonably accurate portrayal of the percentage of negro population in Indiana in the years 1860 through 1960 as compiled from the records of the Indiana Historical Bureau and statistics provided by the United States Census Department.

41. That Marion County and Lake County are the only two counties in the State of Indiana which have negro inhabitants in sufficient number to exercise total control over the election of a General Assemblyman should single-member districting become the practice in said counties.

42. That as of the 1960 census 87.59%, more or less, of the negroes in Indiana lived in multi-member districts while only 46.94% of the white people in Indiana lived in such districts.

43. That the single districting of Marion County as of 1960 would have caused the percentage figures stated in the immediate preceding request to be 51.09% and 33.25% respectively.

44. That the quote appearing at the bottom of page 30 of the complaint is an accurate quotation of the Report of the National Advisory Commission On Civil Disorders and the said quote is not taken from a context which would change its meaning if the surrounding context were included in the quote, the said quote appearing at page 296 of the March, 1968 Bantam Book edition.

45. That as of the 1920 United States census, Marion County was divided into 15 wards and all of the said wards contained negro inhabitants and the ward containing the most negro inhabitants contained a total of 5079 such inhabitants and the ward containing the least negro inhabitants contained a total of 380 such inhabitants and there were nine wards which had more than 1000 negro inhabitants in each ward and a total of 31,479 inhabitants in all such wards while the remaining six wards contained a total of only 3199 such inhabitants.

46. That as of the 1932 United States census Marion County was still divided into 15 wards and that the nine wards which had contained more than one thousand negro inhabitants in each ward as of the 1920 census had undergone a negro population increase of 29.48% over the 1920 census figure while the negro population in the wards with less than 1000 negro inhabitants in each ward as of the 1920 census decreased slightly. The ward with the largest number of negro inhabitants contained 7092 such inhabitants as of the 1930 census, up from 5079 as of the 1920 census. The ward with the smallest number of negro inhabitants as of the 1930 census was the same which had the smallest number of such inhabitants as of the 1920 census

and it had 383 such inhabitants as of the 1930 census, up from 380 such inhabitants as of the 1920 census.

47. That the quotation appearing on page 34 of the complaint is a correct recitation of the test appearing at Mississippi Ohio Valley Historical Review, Vol. XLVII, No. 4, March, 1961, pages 597, 598.

48. That the following text, inadvertently omitted from the complaint, appears after the semi-colon at the bottom of page 35 of the complaint on the named page of the named journal:

> "To Co-ordinate Community Effort
>
> "To encourage a more useful citizenship
>
> To co-operate in escuring (sic.)
> better public service
>
> To help make a more beautiful city.
>
> *The Freeman, A National Illustrated Colored Newspaper,* March 1, 1924, page 1

49. That the first quotation appearing at page 36 of the complaint is a correct recitation of the text appearing at *The Freeman,* Indianapolis, May 17, 1924, pg. 1.

50. That "General Ordinance No. 15, of the 1926 Indianapolis City Counsel, enacted March 15, 1926, appearing at pages 53-54 of the Journal of the Common Council of Indianapolis, 1926 (enactment recorded at pg. 78) is correctly set forth on pages 36 and 37 of the complaint.

51. That the quotation beginning near the bottom of page 37 of the complaint and ending on page 38 thereof is a correct recitation of an article appearing on page 1 of the May 24, 1924 Freeman, i.e., correct to the extent that the physical condition of that issue of that newspaper as preserved at the Indiana State Library will permit.

52. That in the 1923 through 1961 sessions of the Indiana General Assembly there was no reapportionment of General Assembly seats.

53. That the quote beginning on page 39 and ending on page 40 of the complaint is a correct recitation of the text appearing at pages 314 through 316 of *The Negro In Indiana Before 1900*, Emma Lou Thornbrough, The Indiana Historical Bureau, 1957.

5[illegible]. That the following text, inadvertently quoted only in part in the complaint at page 40 thereof appears at Page 4, Col. 1 of the Indianapolis Evening News, Tuesday, January 14, 1873:

IN CONCLAVE

The Colored People Indignant

> It was carefully whispered among the colored men on Sunday and yesterday that at night there was 'goin to be an indignation meetin" at the Colored Baptist Church and with its customary enterprise The News dispatched a representative there, although it was impossible to learn upon what they were going to 'indignate.'

The following petition, drafted by Mr. Russell, was adopted:

> To the General Assembly of the State of Indiana:
>
> The undersigned citizens of Marion County, in the State of Indiana, respectfully, but earnestly, petition your honorable body for the repeal of that section of your Criminal Code which makes it a felony for white and colored persons to intermarry.
>
> And the Hons. Thompson and Oliver, Senators, and Kimball, King, Johnson and Billingsley, Representatives, are requested to present this petition

to their respective houses, and to use their votes and influence to secure the repeal of said section.

And, as in duty bound, your petitioners will ever pray.

55. That with single-member districting the probability is very small that the 1967 Ghetto Area and Ghetto Voting Area would control the nomination and election of less than three members of the Indiana House of Representatives.

56. That with single-member districting the probability is very small that the 1967 Ghetto Area and Ghetto Voting Area would control the nomination and election of less than one member of the Indiana Senate.

57. That the percentage figures given for the Nixon-Kennedy-Branigin-McCarthy vote in the Marion County 1968 Presidential Primary which appear on page 45 of the complaint correctly reflect the results shown in the records of the Marion County Election Board within a margin of .01%.

58. That the percentage figures given for the Nixon-Kennedy-Branigin-McCarthy vote in the Ghetto Voting Area in the 1968 Presidential Primary which appear on page forty five of the complaint correctly reflect the results shown in the records of the Marion County Election Board within a margin of .01%.

59. That the percentage figures given for the Nixon-Kennedy-Branigin-McCarthy vote in the vote cast outside the Ghetto Voting Area but inside Marion County in the 1968 Presidential Primary which appear on page 45 of the complaint correctly reflect the results shown in the records of the Marion County Election Board within a margin of .01%.

60. That the raw vote totals for Nixon-Kennedy-Branigin-McCarthy in the Marion County 1968 Presidential Primary and the Ghetto Vote and Non-Ghetto Vote totals which appear on page 45 of the complaint correctly reflect the results shown in the records of the Marion County Election Board.

61. That the description of the voter-appeal approach made by candidates Nixon, Kennedy, Branigin and McCarthy in the 1968 Marion County Presidential Primary which appears at the bottom of page 45 and on page 46 of the complaint is not inaccurate.

62. That in the Spring, 1968 Presidential Primary the Ghetto Voting Area voted at a rate of 34.26% of the population of the Ghetto Area while the remainder of Marion County voted at a rate of 25.10% of its population.

63. That in the Fall, 1968 Presidential election the Ghetto Voting Area voted at a rate of 32.06% of the population of the Ghetto Area while the remainder of Marion County voted at a rate of 46.35% of its population.

64. That in the 1968 Presidential Primary in Marion County the Ghetto Voting Area voting rate was about 136.49% of the balance of Marion County (as compiled from the figures given in the two immediate preceding requests for admissions) and in the 1968 Fall Election the Ghetto Voting Area voting rate was about 68.89% that of the balance of Marion County.

65. That there is a slightly greater proportion of minors in the Ghetto Voting Area as compared to the balance of Marion County, Indiana.

66. That in the 1968 fall election in Marion County, Indiana there were three negroes on the victorious fifteen member Republican Party ticket for seats in the Indiana General Assembly House of Representatives and in the

Ghetto Voting Area the said three negro candidates received 8128, 8609, 7902 votes respectively or a total of 24,639 while their losing white Democrat opponent with the least alphabetical advantage on the ballot received 26,295 votes from the Ghetto Voting Area or more than the three said Republican negro candidates combined.

67. That George Wallace received 3.49% of the total vote cast for the presidency of the United States in the 1968 fall election in the Ghetto Voting Area and he received 11.21% of the total vote cast in Perry Township Outside Indianapolis in the said election.

68. That in the 1968 fall election the aforesaid three negro candidates received a combined vote of 52,841 in the Perry Township Outside Indianapolis ward while the aforesaid white Democrat House of Representatives candidate with the least alphabetical advantage on the ballot received a vote of 8262.

69. In the 1968 fall election Hubert Humphrey received 73.07% of the vote cast for the Presidency of the United States in the Ghetto Voting Area while the three aforesaid Republican Negro candidates each received not more than 24.66% of the said Ghetto Voting Area vote (the said latter percentage being computed as if the Democrat opponent next to each of the three said candidates were running against each said candidate in a two man race.)

70. In the Perry Township Outside Indianapolis Ward of Marion County, Hubert Humphrey received only 26.08% of the Presidential vote while the said three negro Republican candidates each received a minimum of 68.86% of the General Assembly vote cast (the said latter percentage being computed as if the Democrat opponent next to each of the said three candidates were running against each said candidate in a two man race.)

71. That the chart appearing at the bottom of page 50 and continuing over to page 51 of the complaint is an accurate compilation of the ward by ward vote in Marion County, Indiana in the 1968 General Assembly Republican Primary as reflected by the records of the Marion County Election Board.

72. That the newspaper article quoted on pages 51 and 52 of the complaint is a correct recitation of an article which appeared in the Indianapolis Star on January 18, 1962 beginning on pg. 1, col. 8.

73. That as of the 1960 census the median family income for Marion County Outside Indianapolis was $7,667 while it was $6,106 in Indianapolis, Indiana.

74. That Marion County Outside Indianapolis contained about 31.68% of the Marion County population as of the 1960 census.

75. That as of the 1960 Census Marion County outside Indianapolis contained about 44.20% of the families in Marion County, Indiana which had a family income of more than $9000.

76. That as of the 1960 Census, Marion County Outside Indianapolis contained only 18.37% of the families which had a family income of less than $4000.

77. That as of the 1960 Census, Marion County Outside Indianapolis contained about 38.68% of the college graduates living in Marion County, Indiana.

78. That as of the 1960 Census, Marion County Outside Indianapolis contained only 13.46% of the dwelling units built before 1939 that were in Marion County, Indiana.

79. That as of the 1960 Census, Marion County Outside Indianapolis contained only 1.86% of the negroes who lived in Marion County, Indiana.

80. That as of the 1960 Census, Marion County Outside Indianapolis contained about 14.43% of the deteriorating or dilapidated houses in Marion County.

81. That as of the 1960 Census, Marion County Outside Indianapolis contained 51.51% of the houses with more than one bathroom in Marion County, Indiana.

82. That in the fall election of 1968, about 48.73% of the Republican vote cast for general assemblymen in Marion County, Indiana was cast in Marion County Outside Indianapolis.

83. That while the Ghetto Voting Area cast about 30.67% of the total Democrat vote cast in Marion County in the 1968 Presidential Primary the said area was able to elect and send only about 11.19% of the delegates to the party organization convention the following Saturday.

84. That while Marion County Outside Indianapolis cast about 48.73% of the Republican votes cast in the Fall, 1968 election it was able to elect and send only about 31.16% of the delegates to the Republican County Organization Convention in that year.

85. That the table beginning at the bottom of page 56 of the complaint and continuing over to page 57 contains an accurate compilation of the votes cast for the first alphabetically listed Republican Candidate for the Indiana House of Representatives in the 1968 fall election and for the first alphabetically listed Democrat Candidate for the Indiana House of Representatives in the said election as those votes were cast, ward by ward.

86. That as of the 1960 Census, Marion County, Indiana had about 699,567 inhabitants and occupied 402 square miles.

87. That as of the 1960 Census, the thirty six counties listed on the table beginning on page 59 and continuing

over to page 60 contained a total of about 707,510 inhabitants and occupied about 12,341 square miles or about 30.7 times the area occupied by Marion County.

88. That the table beginning on page 59 of the complaint and continuing over to page 60 contains an accurate listing of the Republican and Democrat vote for Secretary of State in the fall, 1968 election in each of the listed counties.

89. That as of the 1960 Census none of the thirty six counties listed on the table referred to in the immediate preceding request for admission were in multi-member General Assembly Senatorial districts.

90. That as of the 1968 fall election all of the said 36 counties were in single member General Assembly Senatorial districts except for Clay, Sullivan and Posey counties which were in two-member-multi-member-multi-county districts made necessary because sufficient adherence to the "one-man-one-vote" rule would not permit single member districting without splitting counties.

91. That as of the 1960 Census all of the said 36 counties were in single-member districts of the General Assembly House of Representatives.

92. That as of the 1968 fall election all of the said 36 counties were in single or multi-member districts of the General Assembly House of Representatives containing one, two or three representatives and that all of the multi-member districting took place only because legally sufficient adherence to the one-man-one-vote principal could not be achieved with single-member districts without splitting counties.

93. That in the past 80 years, twenty three men have served as Governor of Indiana and only one has been from Marion County, Indiana.

94. That the characterization of the one Governor in the past 80 years who was from Marion County as being a "Ku Klux Klan candidate" which characterization appears on page 62 of the complaint is not inaccurate.

95. That there have been 39 Lieutenant Governor's of Indiana since Indiana was admitted to the union and only one of them has been from Marion County.

96. That since the enactement of the Indiana Constitution in 1851 there have been forty one Auditors of the State of Indiana and only two of these have been from Marion County.

97. That since the enactment of the present Indiana Constitution in 1851 thirty five individuals have served as Superintendent of Public Instruction in this State and only one of these has been from Marion County and he was elected in 1867.

98. That the newspaper article quoted at pages 63 and 64 of the complaint is an accurate quote from the *Sentinal,* Indianapolis, January 14, 1873, pg. 4, col 4 & 5.

99. That the table appearing on page 64 of the complaint contains an accurate listing of the population of the State of Indiana during the years listed.

100. That the table appearing on page 64 of the complaint contains an accurate listing of the Marion County population during the years listed.

101. That the table appearing on page 64 of the complaint contains accurate statements as to the number of General Assembly Senators and Representatives allotted to Marion County, Indiana during the apportionments which took place during the years listed.

102. That the historical statement made beginning at the eighth line from the bottom of page 64 of the com-

plaint and continuing through the tenth line of page 65 of the complaint is not historically inaccurate.

103. That between 1916 and 1934 sixty six of the ninety two counties in the State of Indiana experienced shifts in party control at least once.

104. That the twenty six counties in the State of Indiana which did not experience shifts in party control between 1916 and 1934 contained only eighteen percent of the Indiana population.

105. That the sixty six counties referred to hereinabove contained eighty two percent of the Indiana population.

106. That the first table appearing on page 66 of the complaint constitutes an accurate summary of the amount of General Assembly experience of the assemblymen of the 1933 General Assembly who were from constituencies which had 80% or more of their population in incorporated areas with more than 300,000 population and the experience of assemblymen from areas which were not of that character.

107. That the second table appearing on page 66 of the complaint constitutes an accurate summary of the percentage of representatives in the 1959 through 1967 General Assemblies who had not been incumbants when elected to the seats which they held in the years listed the said summary being correct as to the categories of, single member constituencies, multi-member constituencies, the Marion County constituency and all multi-member constituencies with Marion County abstracted except that the 1967 figures disregard the 1965 reapportionment and the large number of small, multi-member constituencies which were created in that reapportionment.

108. That the table appearing on page 68 of the complaint contains a correct portrayal of the number of bills successfully sponsored by Senators of the Defendant Gen-

eral Assembly who had experience in the Indiana Senate and by Senators who did not have previous experience in the Indiana Senate prior to the session in which they were then serving.

109. That during the 1959, 1961, 1965 and 1967 General Assembly sessions the Marion County House of Representatives delegation to the General Assembly was able to achieve the enactment of only about 24.38% of the bills which its members sponsored while in the 1963 session when there had been only a 45% turnover of Marion County House legislators the said delegation was able to achieve the enactment of about 34.11% of the bills which its members introduced.

110. That there are no negroes in the Senate of the present Indiana General Assembly.

111. That there are four negroes in the House of Representatives of the present Indiana General Assembly.

112. That since the 1921 reapportionment only two elections have placed legislators from both parties on the Marion County General Assembly delegation and these two instances (1923 & 1941) involved the election of only four legislators against the trend.

113. That there is a substantial number of regular voters in Marion County, Indiana who have no party affiliation or who regularly cross party lines.

114. That the mass communications media in Marion County, Indiana either do not or cannot provide any substantial amount of information to the voting public in Marion County as to individual views, opinions and personalities of the forty two General Assembly candidates for Marion County seats who the two major parties present on the ballot in the fall election of every presidential election year or the thirty four General Assembly candidates

for Marion County seats who they present on the ballot in the fall election of every other national election year.

115. That in the two Marion County General Assembly elections since 1921 where there were candidates from both major parties elected to seats, the four assembly candidates who were defeated notwithstanding the overall victory of their party were jewish.

116. That Lake County, Indiana is second only to Marion County, Indiana in population and its negro population currently is at least 80% the size of the negro population of Marion County, Indiana.

117. That the negroes in Lake County, Indiana are ghettoized in that they live in substantially large numbers in sufficiently contiguous areas to exercise very substantial control over the election of some General Assemblymen if single-member districting prevailed throughout the state.

118. That the following text appears at 75 *Yale Law Journal* 1321-23 and it is correctly quoted and it is mathematically sound:

> In a district of N voters, there are 2^N different voting combinations. For an individual voter to be able to cast a critical vote, the other voters in the district must be equally divided. The formula for the number of combinations which can be formed by M persons divided into two equal groups is:
>
> $$\frac{M!}{(\frac{M}{2}!) \cdot (\frac{M}{2}!)}$$
>
> The exclamation point (!) indicates a factorial. It means that the number it follows is to be multiplied by every positive integer smaller than itself (e.g. $4! = 4 \cdot 3 \cdot 2 \cdot 1 = 24$) In calculating the number of times each person can cast a critical vote, the

fraction must be multiplied by 2 to account for both the yea and the nay votes. Calculations for the four examples are presented below.

Dist.	Pop.	Poss. Comb.	# times each casts crit. vote	% influence
H	3	$2^3 = 8$	$2 \times \frac{2!}{(1!) \cdot (1!)} = 4$	4/8 = 50%
I	5	$2^5 = 32$	$2 \times \frac{4!}{(2!) \cdot (2!)} = 12$	12/32 = 37.5%
J	7	$2^7 = 128$	$2 \times \frac{6!}{(3!) \cdot (3!)} = 40$	40/128 = 31%
K	9	$2^9 = 512$	$2 \times \frac{8!}{(4!) \cdot (4!)} = 140$	140/212 = 28%

For example, in a district of only 101 citizens there are 2,535,301,200,456,458,802,993,406,410,752 different possible voting combinations. The factorial of fifty (50!) one of the other numbers which would enter into the calculations, is approximately equal to three followed by sixty-four zeros. These numbers are too large even for large electronic computers to work with.

Of course the population figures in these four examples are unrealistically low. They were chosen merely to illustrate the effect which is described above and to demonstrate the fallacy of the inverse ratio hypothesis which is used to justify multimember electoral systems with different sized districts. In real electoral systems the populations of each district will be in the thousands or tens of thousands. With numbers this large actual numerical calculations are difficult if not impossible. However, as the number of voters becomes larger, the percentage of times in which each citizen-voter can affect the outcome of the election can be approximated with a great deal of accuracy. The use of a standard mathematical technique of approximation demonstrates that the voter's ability to affect the election of his legislator decreases as the inverse of the square root of the population of the district rather than as the simple inverse of the population.

Consider a district made up of N + 1 citizen voters, where N is an even number. The total number of ways in which each citizen-voter could vote yea or nay on a particular issue is:

$$2^{N+1} \text{ which is equal to } 2 \bullet 2^{N}$$

Each would be able to cast a critical vote only where the other N citizen-voters were equally divided into two groups; N/2 voting yea and N/2 voting nay. This, as previously indicated, can happen in $\frac{2N!}{((\frac{N}{2})!) \bullet ((\frac{H}{2})!)}$ ways. Thus an individual citizen-voter would be critical in determining the outcome of a vote in the following fraction of combinations.

$$\frac{2N!}{((\frac{N}{2})!) \bullet ((\frac{N}{2})!)} \div (2 \bullet 2^{N}) =$$

$$\frac{N!}{2^{N} \bullet ((\frac{N}{2})!) \bullet ((\frac{N}{2})!)}$$

The factorial of large numbers may be very closely approximated by the following formula which is known as Stirling's formula:

$m! = e^{-m} \bullet m^{m} \text{ X sq. root of 2 X pi Xm}$

where e and pi are well known mathematical constants. Substituting this value into the previous formula by allowing N/2 to equal m, the fraction becomes:

$$\frac{e^{-2m} \;.\; (2m)^{(2m)} \;.\; \text{sq. rt. of 4 Pi X m}}{2^{2m} \;.e^{-m} \;.\; m^{m} \;.\; \text{sq. rt. of 2 pi X m.}e^{-m} \;.\; m^{m} \;.\; \text{sq. rt. 2.pi.m}}$$

By expanding the numerator into separate multiplicative terms and cancelling common terms in the numerator and denominator, the result is that the average citizen-voter is critical in one over the square root of two times pi times N combinations.

Where m is greater than 100, Stirling's formula gives a result which is accurate to within 0.1% and becomes more accurate as m increases.

Respectfully submitted,

JAMES BEATTY

JAMES MANAHAN

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK CHAVIS, et al., *Plaintiffs* vs. EDGAR D. WHITCOMB, Governor of the State of Indiana *Defendant* and JOHN C. RUCKELSHAUS, et al., *Intervening Defendants*	NO. IP 69-C-23

June 17, 1969

Before KERNER, Circuit Judge, and STECKLER and NOLAND, District Judges.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANT:

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G. KENT FRANDSEN
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FOR INTERVENING DEFENDANTS:

WILLIAM K. BYRUM
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Indianapolis, Indiana 46204

BE IT REMEMBERED that on the 17th day of June, 1969, at 10:00 A.M., in the United States District Court for the Southern District of Indiana, Indianapolis Division, at the United States Courthouse in the City of Indianapolis, Indiana, the above-entitled cause came on for trial before the Honorable Otto Kerner, Seventh Circuit Court of Appeals, Chicago, Illinois; Honorable William E. Steckler, United States District Court, Southern District of Indiana, Indianapolis Division, and Honorable James E. Noland, United States District Court, Southern District of Indiana, Indianapolis Division, with the Honorable Otto Kerner presiding, and that the proceedings were in words and figures as follows, to wit:

> (Before commencement of trial the reporter marked for identification the following Plaintiffs' Exhibits: 1, 2, 4, 5 & 6, 5A, 5B, 5C, 5D, 5E, 6A, 6B, 6C, 6D, 6E, 7A, 7B, 7D & 7E, 8A & 8B, 8C, 8D & 8E, 9)

JUDGE KERNER: Gentlemen, as we have indicated, initially there are four motions pending in the Chavis versus Whitcomb matter and we would like to hear argument about each of these four motions by parties involved. They are as follows: Motion pursuant to Rule 23, regarding the class action. The second motion is a motion for such order setting trial date and for a continuance filed by the Attorney General of Indiana. The third motion is a motion for intervention as filed by Mr. Byrum and plaintiff's motion to strike for continuance as sham under Rule 11, Federal Rules of Civil Procedure, and then this morning as we arrived, meeting party's request for submission. Those are motions we will hear. After hearing, the Court will recess

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to make a determination on these motions, after which we will then, depending upon the ruling of the motions, will move into possible hearing of the evidence in the Chavis matter.

MR. MANAHAN: May it please the Court, on Plaintiff's motion pursuant to Rule 23 of the Federal Rules of Civil Procedure, we had this cause declared a class action. This motion was filed shortly after preliminary pre-trial conference in this cause after the matter had been raised at that time and it did request that this cause be declared a class action if such was necessary and that appropriate notice determined by the Court, if such notice was necessary. The Court, in its ruling of May 12, 1969, made no specific mention of the motion. However, it did consider whether or not the plaintiffs were entitled to bring the suit in the manner and under the classifications which they had designated themselves as having, and noted jurisdiction in that entry.

We, in our motion to have cause declared a class action, have cited what we think is the appropriate case law on it, but taken no strong position as to what should be done. The motion—the nearest cases to that Court was a District Court case from Chicago in the Seventh Circuit in which an individual was entitled, held entitled to suit in behalf of a very great class of tax payers and make notice merely by an ad in the newspaper. Here we have this fact situation. We have five individuals representing different classes. We have a case filed at the time that the General Assembly against whom a remedy has been sought is in session. We have had, at the time of filing, a press conference published in the papers of general circulation in this county and carried over the TV and radio stations of this county. We have had courtesy copies of the complaint and the first legal memorandum thereto served upon or provided to each member of the General Assembly, including the 23 members of the General Assembly who represent Marion County. We have had this notice heretofore and before the class action was filed, before the class action motion was filed and we made that motion only for purposes of bringing to the Court's attention what question there may be as to notice in a class action. Therefore, we pray for no specific relief on that motion.

JUDGE KERNER: Will you respond?

MR. JOHNSON: May it please the Court and counsel, I am Richard C. Johnson of the Attorney General's office of the State of Indiana. There are generally five classes designed in the plaintiff's complaint, it's difficult to thumb through the complaint and find a definite determination of those classes, but roughly they may be stated as follows. All the Negroes living within Marion County, number one. Number two, the independent voters of Marion County. Number three would be the suburban Republican bloc of voters within Marion County. Number four would be Marion County voters as a whole, I take it that includes all races and all individuals regardless of their interest. Number five would be Marion County voters, Lake County voters or other smaller multi-member districts. We would ask that the Court strike, I believe it's class number two defined as the independent voters of Marion County. By definition an independent voter is incapable of being a class, he votes one way one election, one way another. Therefore, there aren't any common questions of law or fact tying him up with any other individual in that particular class.

We would also ask that the voters of Marion County, that is, the Negro voters of Marion County further be subdivided for purposes of this action into two classes. Negroes living within the Ghetto Area and Negroes living without the Ghetto Area. It is my impression and I would respect-

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fully submit to the Court that a reading of the complaint shows very clearly that the interest of these two subcategories are entirely different and that there aren't any, but there aren't sufficient, I should say, question, common questions of law or fact as between Negro voters within what is defined as the Ghetto Area and voters outside the Ghetto Area, but within Marion County.

So, we are asking that the independent voter class be stricken, that the class of Negro voters in Marion County be further subdivided into two classes, (a) Negroes living within Marion County and—or within Indianapolis within the Ghetto Area and, (b) Negroes living without the Ghetto Area, I believed it's described as "Ghetto voting area" for purposes of the complaint, and inside Marion County. Thank you.

JUDGE KERNER: Any further argument on this matter by any other counsel? We will then move next to the motion to vacate order for setting trial date.

MR. FRANDSEN: May it please the Court, I am Kent Frandsen, representing the Attorney General's Office, and a week ago last Friday, I received a call from Judge Steckler advising this office that he had established or requested a preliminary conference with counsel for three causes pending in this Court. Precisely, the same time we were advised—the Attorney General's Office was advised that an Indianapolis law firm was petitioning to intervene in this cause. This was as a result of numerous inquiries which the Attorney General's Office had had concerning the interest on the part of a number of people in Marion County that the Governor was not a proper party to adequately represent their interest in this particular proceeding.

Upon attending the conference set by Jedge Steckler, we were apprised that the request of the court it might be convenient to try these cases back to back. The Attorney

General's Office, at that point, felt it would be appropriate in the best interest of presenting the most current data statistics for your consideration to delay, to vacate the order setting the date for trial and to grant a 60 day continuance.

MR. MANAHAN: May it please the Court, we have made a verified presentation and the fourth motion to be taken up by the Court made in response to that motion just—we will stand on that verified presentation which has not been contradicted in any way subsequent to our making it last Friday.

JUDGE KERNER: I think you should announce formally in Court here that prior to our coming out here in the open Court we have sent notification to counsel in both the Dortch and CCLC matter. We will hear the argument as to the three judge court tomorrow morning at 9:30, which at that time, of course, it might have something to do with its present motion to vacate the order setting for trial. Any further comment concerning the motion to vacate the order for trial? If not, we will move to the third motion for leave to intervene as defendants filed by Mr. Byrum.

MR. BYRUM: May it please the Court, the intervening parties move for leave to intervene in this matter on the ground that there is a substantial interest in the subject matter of this action and representation by the defendant Edgar D. Whitcomb as Governor of the State of Indiana is inadequate, since he represents only the interest of the State of Indiana and that the intervening parties will be bound by any judgment of this Court and that their interest in this action, and that their interest in the main action have questions of law and fact adverse to these plaintiffs'. I would like to point out that by motion filed by the plaintiffs and by statement made by the defendant's counsel there is no opposition from any of the existing parties in this lawsuit to the intervention by these intervening parties. I might also mention that from my reading of the law, there is very grave and significant area that this Court is determining before it, that having to do with whether or not the Federal Constitution through the Equal Protection Clause can extend itself to holding the Indiana Constitution unconstitutional. It is stated that the Act that is challenged is apportionment statute, but if I may, Your Honor, read from the Indiana Constitution, Article IV, Section 6, wherein it reads that "Districts Requirements as to Divisions. A senatorial or representative district where more than one county shall constitute a district, or shall compose of contiguous counties and no county for a Senatorial apportionment shall ever be divided."

Now, I believe from the prayer of plaintiffs' complaint that there is a prayer requesting single-member districts for the Senatorial districts, which lies in the face of this constitutional requirement of the State of Indiana. I believe that these petitioning intervening applicants have every right to present their adverse interest to this Court for the reason that the Governor of the State of Indiana, as found by this Court in its preliminary hearing, represents only and solely the interests of the State of Indiana. The Governor of the State of Indiana is not a taxpayer in this county, to my knowledge he is not a property owner, he is not a voter in this county, he is not a permanent resident of this county, he is named as the defendant solely and only by virtue of his office as Governor of the State of Indiana and he was singled out for that reason and that reason only.

I might mention that this action is brought pursuant to Rule 24, of the Federal Rules of Federal Procedure on behalf of the intervening applicants, Mr. Ruckelshaus, Mr. Bryant, and Mr. Morris, and we feel they, as property owners, taxpayers, voters and residents of diverse areas within Marion County have an immediate and pressing special interest particular to them which is adverse to the plaintiffs' and they are entitled to have their cause heard before this Court.

I might also mention that as we have filed in our affidavits each of the intervening applicants received no official notice of the pendency of this action until June 9, 1969, was their first notice of the existence of this case.

JUDGE KERNER: What was that date?

MR. BYRUM: June 9, 1969.

JUDGE KERNER: That is the first time you had notice?

MR. BYRUM: Yes, sir.

JUDGE KERNER: You are a member of the Common Council here aren't you?

MR. BYRUM: I am, Your Honor, I am.

JUDGE KERNER: You have been aware of the CCLC and these other matters that were filed, you were party defendant in one of them; were you not?

MR. BYRUM: I assumed we were discussing the Chavis matter. I am not a party to the CCLC or the other lawsuits. However, the Chavis matter, I will be very frank with the Court, I was first aware of the existence of this lawsuit personally on June 7th, 1969 and I discussed this matter with Mr. Manahan, we office together in the same office building and through a conversation, he indicated this case had been taken—I personally was unaware of the existence of this lawsuit.

JUDGE STECKLER: Mr. Byrum, are you drawing a distinction between notice and official notice, I note you made reference to the first time you received official notice.

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MR. BYRUM: Well, I said official notice or actual notice of the pendency of this action. Now I am making that as a statement of fact, that we believe that we are entitled to come in and represent our interest. I am serving as an attorney in this matter, not as a party.

JUDGE KERNER: I understand.

MR. BYRUM: I might also mention each of the intervening applicants is a property owner in Marion County. They are all registered voters of the county. Since the sole and only defendant in this matter is the Governor and by virtue of his office as Governor, and the complaint, on the face of the complaint seeks a remedy against the General Assembly and we would presume on reading the complaint that there would be some members of Marion County in this lawsuit, but as I understand it, they have been dismissed as parties' defendants in the lawsuit from reading of the pleadings. Therefore, the only defendant is the Governor and his position as chairman of the State Election Board as Governor is the only manner in which he represents any interest in the State of Indiana or in Marion County, excuse me, and I believe it is improper to ask the Governor to represent the interests of Marion County and opposing interests of the rest of the State as a whole. I feel there is a failure, Your Honor, to join opposing adverse interested parties in this lawsuit.

I might also mention we took proper and immediate action. I might mention I was getting into the office as early as 6:30 in the morning and leaving as late as 9:30 at night trying to prepare the pleadings, just read the pleadings, the plaintiffs' complaint, the memorandum that is attached to it amounts to some 67 pages alone, and I have, I believe, used considerable didigence to try to formulate the issue presented and present an appropriate pleading to intervene in this matter. I feel our people are appropriate parties. Apparently the defendants and plaintiffs also concur for the reason they have no objection by reading of their response to our intervention. So, with this, I would say we feel our motion to intervene is well taken and we feel in view of the magnitude and the significance of this decision that we should be authorized and entitled to participate.

JUDGE KERNER: I understand, if I correctly—there will be no loss of time if you are allowed to intervene, is that correct?

MR. BYRUM: What I allege, Your Honor, is—excuse me. I allege that the intervention of the interveners will not, to any extent, delay or prejudice the adjudication of the rights of the original parties. Now, that is what I have alleged.

JUDGE KERNER: If you were allowed to intervene, I presume you would ask additional time for the pleadings.

MR. BYRUM: Yes, Your Honor.

JUDGE KERNER: You realize, of course, the herculean position placed before the three judges in trying to resolve this matter, not knowing it would be resolved. Nevertheless, there is a very critical time factor involved in any reapportionment case, certainly at this time.

MR. BYRUM: I would only call to the Court's attention that this is truly a reapportionment case. This is a redistricting.

JUDGE KERNER: We have not yet made a determination. We don't know in what direction we may have to find in view of the evidence.

MR. BYRUM: I appreciate that. I also wish to call to the Court's attention the herculean task that I have facing me, being involved in this case only since the tenth of June of 1969, and I believe that we have performed well to provide the legal research and the motion that we have presented before the Court this far. However, if the Indiana Constitution and the Acts passed by representatives of both Marion County and Indiana citizens is unconstitutional, certainly it could wait for a time for there to be an actual and existing controversy of well prepared cases to adjudicate that issue. So this is our position. Thank you, Your Honor.

MR. MANAHAN: I do not think we will have to wait in order to have an actual well prepared adjudication. The Attorney General's Office has been on this case since the case was filed. Public officers are presumed to do their duty and I am sure the Attorney General has done, will make the representation necessary to represent the parties as to our lawsuit. We do not oppose intervention, provided that we can hold the interveners to the letter of their statement and their motion for leave to intervene, that their intervention will not, to any extent, delay or prejudice the adjudication of the rights of the original parties. We maintain that any delay would prejudice Plaintiffs' rights in making it far less likely they would be able to achieve a timely adjudication and have a regress of their rights by the time of the next General Assembly election, if there were any delay in this matter. Undoutedly, the feelings have been stated strongly enough on both sides, but the Federal Supreme Court will be the final adjudicator of this matter, however it is resolved, and putting this case off would cause considerable delay thereto and carry us beyond the next primary election before there were final adjudications.

JUDGE KERNER: Anyone further who wishes to make any comments? If not, then we will hear the motion to

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strike certain pleadings as sham under Federal Rules of Civil Procedure.

MR. MANAHAN: We are the moving party on this motion. In his motion for continuance and in his motion to revise estimate of time for trial, the Attorney General of Indiana has stated that he has not had sufficient time since they were presented to him to examine the exhibits, which were prepared by plaintiffs pursuant to the direction of the Court on May 12, 1969. We have presented the affidavit of the person who actually prepared those exhibits to the effect that it took him a total of 20 hours research and that he prepared them in less than two weeks, working alone. We have presented further the fact the Attorney General's office has the largest lawfirm in the State of Indiana, has over 50 lawyers and has over 80 employees and that any representation that these exhibits could not be checked out with the underlying documents which were in the State House during the first part of this month and which are in the Courtroom now under subpoena so that we could put the documents in without relying on stipulation, that it would have taken him more than two weeks to check out those exhibits. We maintain that that is sham and that is the basis for continuance therefore, is a sham.

Likewise, he is in no way entitled to rely upon the appearance of three petitioners to intervene in order to obtain a continuance for himself. If this could be done, and as class actions require that everyone be actually notified or that persons can show up at the last moment every time a case is set for trial, no reapportionment case would ever be tried. They have been tried in the past and will be tried, I trust, in the future and we maintain that for these such cases as these to be tried, the strict literal application of Rule 23 as to notice to the parties simply cannot be with the intent of that rule and last minute petitions to intervene should not be favored in any way, except

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to give the person a forum to make what presentation he can, but the timing of the matter, so long as a suit has been publicized should not result from any last minute intervention.

MR. JOHNSON: May it please the Court and counsel, I think I am the one to properly respond to this motion to strike our pleading as sham because it's my good faith which is under attack. I can unequivocally state to the Court in my brief legal career consisting of 10 years this is the first time my good faith as a lawyer has been attacked, the first time any motion I prepared or filed . . .

JUDGE KERNER (Interposing) You are fortunate. Mine was attacked the first year I practiced.

MR. JOHNSON (Continuing) . . . I can state to the Court unequivocally that the motions were made in good faith, that I signed the affidavit in support of the motion to vacate in good faith, that we were, that our office and myself in particular, did have numerous phone calls from people requesting information about whether they could intervene, whether they couldn't intervene. I did have a conference—perhaps two conferences—with Mr. Byrum, but the first of which took place only, my recollection is last Thursday and it was toward the end of the week that I had the first knowledge I acquired of any intervention possible or likely in this case.

Now, I find an affidavit in support of the motion to vacate, setting out Governor Whitcomb as Governor of the State of Indiana does not own any property within Marion County and this is in fact the case. To explain the basis for our requesting a delay in the trial of this case, the basis is mainly one of saving the Court's time. Now, if only these little exhibits were in contention in this motion, there wouldn't be any problem in starting trial this morning. We have had an opportunity since these exhibits were presented to us to check them out as far as accuracy and reliability is concerned, and I'm willing to stipulate; however, there is a vast quantity of evidence of a documentary nature, which is going to be attempted to be introduced on behalf of both the plaintiff and defendant in this case. It was my thinking at the time we filed the motion to vacate that if counsel would have an opportunity to present that documentary evidence to each other in an attempt to stipulate as to the same, it would be vast time-saving device as far as this particular Court is concerned and I might add—

JUDGE KERNER: There has been no exchange of such documents between the attorneys as to stipulation?

MR. JOHNSON: There has been some exchange. These are the exhibits to which counsel just made reference; however, this is just the tip of the iceberg.

JUDGE KERNER: This is why I ask the question, has there been any stipulation at all as to agreement upon any exhibits?

MR. JOHNSON: Yes, we have stipulated a number of them to this point, Your Honor, but there is a vast number that we would like to introduce. We haven't had an opportunity to present to the other side and I am informed by telephone that two or three people were subpoenaed for this particular case. I saw this morning a cartload of records from the Secretary of State's Office being transmitted to this Court, evidence which I can only conclude the plaintiffs wish to introduce into this cause. If a—

JUDGE KERNER (Interposing): When this Court recesses to consider these motions, you will have some time, I imagine, to exchange your views on those exhibits which, certainly, I would appreciate if you would.

MR. JOHNSON: We will do our very best within the time we have. The cart from the Secretary of State's Office to which I just referred consists of papge after page and ledger after ledger of documents.

JUDGE KERNER: Are those public documents which the Court could take judicial notice?

MR. JOHNSON: Right.

JUDGE KERNER: I would presume that from the way you identified them.

MR. JOHNSON: I think that's correct, Your Honor. Nevertheless, we, this is just what I know about them, I am just—I can only assume there are other documents, but not of the public record nature which the plaintiff wishes to introduce, but as far as the time of this thing is concerned I can only say the legislature, last legislature of the Indiana General Assembly just ended, well, it ended the first—on the first Tuesday of March, but our office, although we do have 50 attorneys working for us, every one of those 50 was completely tied up, writing opinions, checking bills and so forth while the legislature was in session; frankly we just haven't had the time to devote to this case up to this point that it deserves. That is end of my presentation.

JUDGE KERNER: Do you wish to make any further comment?

MR. MANAHAN: Yes, I would like to reply. The only reason any subpoena duces tecum at all has been issued and the only reason for the pile of things in the back of this Court and for the exhibit list and for the proposed exhibits is because of a statement in the Attorney General's motion for continuance that he had not had time to check out these charts and needed a continuance to do so. Upon that, we assume he was not going to stipulate. In fact, he said he needed more time in order to be able to stipulate.

JUDGE KERNER: He indicated, however, in open Court he would be willing to sit down and examine the documents and I hope when the Court recesses we will not be recessed for too long a period, but you might have sufficient time with this statement.

MR. MANAHAN: He does have copies of them. The other evidence can go back to the State House if these are stipulated and our presentation will be very brief and I just want to refute any suggestion that a continuance would eventually save the Court time. It would not. We can make a very brief presentation without stipulation and a briefer one with it.

JUDGE KERNER: Any further comment? May I, for my own indication here, being rather strange in the community, I see we have two Attorney General representatives here; am I correct? Mr. Johnson and Mr. Frandsen, what is each sharing in this matter?

MR. FRANDSEN: If it please the Court, Your Honor, Mr. Johnson was out of the office a week and a half ago when Judge Steckler called that unscheduled meeting. I represented the Attorney General's office as Chief Counsel. Mr. Johnson is in charge. I have—

JUDGE KERNER (Interposing): You were sort of interim when he was bound up with other things?

MR. FRANDSEN: Yes, I did sign the motion to vacate the trial order for a continuance, based on the remarks made at the particular time.

JUDGE KERNER: Mr. Manahan, you did file with the Court on June 16 an exhibit list. Are there any further exhibits other than those listed on this document?

MR. MANAHAN: There are about three that I missed.

JUDGE KERNER: Will you take those up immediately with Mr. Johnson so he will be able to pass upon them?

JUDGE STECKLER: Have you served a copy of the exhibit list upon opposing counsel?

MR. MANAHAN: I got one to Mr. Byrum yesterday.

JUDGE KERNER: If there are no further comments to make to the Court, we will be in recess to pass upon the motions.

(Court recessed at 10:30 A.M., reconvened at 11:30 A.M., and the following proceedings were had)

JUDGE KERNER: This Court, during recess, has considered all of the four motions that were argued before us this morning and this is the finding of the Court which will be done verbally at this time to be followed by more formal orders later in the day, written orders. The motion pursuant to Rule 23 to have cause declared a class action is denied.

The Court further finds that the answer by the Attorney General does not deny the residency and voting ability of the plaintiffs in this action and therefore establishes the capacity of the plaintiff to sue in this action.

The second motion of the Attorney General seeking to have a continuance for a trial date is denied.

The third motion for leave to intervene and to file the complaint and other pleadings nunc pro tunc is granted.

The intervenors' motion for continuance is denied.

The fourth motion, plaintiffs' motion to strike the pleadings, is denied.

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Gentlemen, if you are prepared to present the evidence I wish before you begin, the Court has taken judicial notice under the 1960 census and the population of the various counties of the State of Indiana, the notice a malapportionment of Marion County in relation to the other counties. I merely raise that as a preamble so you may take this into account in the presentation of your evidence before this Court.

MR. BYRUM: May I address the Court?

JUDGE KERNER: Yes.

MR. BYRUM: It is my understanding that I will be given an opportunity to raise my motion for continuance after there was a ruling on the motion for intervention. I did not previously take the opportunity to present my case on the motion for continuance, because our original notice in our informal discussion and wrote this down having to do with the motion to declare a class action Rule 23, second item, motion to vacate and motion for continuance, third, our motion for intervention. I didn't know I was being asked to join with that discussion in a request for continuance. I would like to have the opportunity of those presenting argument on our motion for continuance by the intervening parties, if that's possible.

JUDGE KERNER: Very well. The Court is of the opinion you may present argument on the motion for continuance if you so desire.

MR. BYRUM: Thank you, Your Honor. In our motion for continuance, which was filed simultaneous with filing our motion to intervene, copies of which were served upon each of the parties previously in the lawsuit. We pointed out to the Court that I personally was retained in this matter on the 9th day of June, 1969. The file marked copy of the complaint, which I had been given was filed March 18, 1969, although in a discussion with Judge Steckler, it was pointed out to me that the case was filed prior to that time, why my complaint is filed marked, initially, March 18, and statements made in my avadavit were based on that file statements made in my affidavit were based on that file mark I found on the original of the complaint furnished me.

JUDGE STECKLER: Where did that copy come from, do you know, Mr. Byrum? We are at a loss to understand how a different date could have been place on the copy of the complaint that you had—that you have.

MR. BYRUM: I do not know, Your Honor, this was given to me by the Attorney General's Office when I inquired.

JUDGE STECKLER: That was given to you by the Attorney General?

MR. BYRUM: Yes, because my affidavit varies from what I understand the facts to be. I thought I should mention that fact. So, when I initially was employed in this matter, and seeing the case was filed toward the end of March and the case was set for trial from the previous Court setting of the matter on May 12th, I did not believe it to be an abuse of my relations with this Court to consider the prospect of a continuance, since I had only been employed on the 9th of June.

I would like to point out I have considered the problems of this Court and the three judge panel. I recognize the practical problems involved in getting each of the three judges together. I know each of you have very firm claendar dates that are difficult to abide by, but I wish to call to your attention if I may, that we are dealing with a very important issue. One, that affects vitally the interest of my clients who, by the Court's ruling, have indicated have an interest, a legitimate interest, in this lawsuit.

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I would like to point out there are some 750,000 people in Marion County who also have a vital interest in this matter and likewisely, Lake County, and the rest of the State of Indiana and it's not, this action is not being taken lightly, it's not being taken for purposes of delay but it's taken with a legitimate concern of trying to provide an adequate defense for my clients. I have been getting to the office as early as 6:30 in the morning, and leaving as late as 9:30 and 10:30 at night, trying to go through the volumes of pleadings which are in pounds, not just pages. I have attempted to familiarize myself with each of these pleadings, I have attempted to research the law, but I must confess before you that I have not read all of the cases that are cited in all of the briefs and I have not studied all of these cases; I have not researched the law. I have not prepared myself so that I know I am prepared to go to trial on this matter and represent adequately the interest of my clients and the classes they represent, each of whom have an adverse interest, an interest to the plaintiffs and possibly the defendant.

I might also say not until this morning have I seen any of these exhibits. There are volumes after volumes of exhibits here. I have been asked to stipulate as to the facts which are presented here without having an opportunity whatever to corroborate any of these facts with independent sources. I have not had an opportunity to discuss the case adequately with my clients. I might mention Mr. Bryant had planned to go to Chicago tomorrow on other business. He has been in my office and we have discussed this matter very briefly. I have had occasion to discuss the matter with Mr. Ruckleshaus, but there again, only briefly. I filed an affidavit of my own difficulties in even being here this morning by reason of other pressing problems of matters that were set some many months ago, 6 or 7 months ago, this one case I was supposed to be active in this morning was set, I believe it was on January 19. Mr. Ruckelshuas has filed an affidavit with the Court I would like the Court to take cognizance of. Mr. Morris just returned from Philadelphia yesterday at 4:00 and I have had very little opportunity to discuss this case with him other than over the telephone last week. Now, I call this to your attention to point out from the affidavits we have filed in furtherance of my motion for continuance these facts are true, we were in all our good faith, not knowledgeable about this case existing. We assumed even after I became involved that that would cause no delay or prejudice the rights of any of the parties by such a delay such as to allow me to familiarize myself with the facts and the law, research each of the elements of fact that are intended to be proved here, to prepare a trial brief which I haven't had an opportunity to prepare. I discussed this matter with Judge Steckler yesterday and told him there was just no way in the world I can prepare this case for trial, there is no way in the world I can adequately represent the interests of my clients who are parties in the lawsuit. There is just no way that I can be prepared to defend their interests or to go out and accumulate facts, accumulate them, accumulate evidence to support their contentions on their case in chief. I feel it would be folly for me to attempt to do this. For that reason, I must respectfully request the Court to reconsider the ruling on our motion for a continuance, for the reason that this Court is testing a new, it has previously ruled on the question of the apportionment for which this Court, I am sure, will take judicial knowledge and the Court is just not testing a new—or this statute—that by this action it is being asked to set aside the provisions of the Constitution of the State of Indiana.

Now, I believe that this is of such a significant interest that if the plaintiffs' allegations are correct, if they are correct, could they not stand the test of an adequate and full disclosure of all the facts of our being given the opportunity to present and to accumulate such facts as are necessary to prove or disprove these allegations. I feel that to ask me to go to trial on the basis of what amounts to basically three or four days of research, three or four days, it takes a day just to read the complaint, it's wholly asking me to do as the Court mentioned earlier, a herculean chore. I feel it's wholly impossible for me to be prepared and it seems to me it would be wise to allow both sides of this issue to be fully explored and fully amplified.

I would like to also point out I am in no position to verify or corroborate any of the exhibits, I first saw them 20 minutes ago or when they were brought in Court earlier, when the Court indicated, asking us if we would look them over. We have but there is no way I have of verifying these facts and, therefore, I cannot, on behalf of my clients, stipulate to any of these facts. I cannot agree to the admissions made by the Attorney General's Office as to any of the facts. We have filed our answers to the request for admissions pursuant to the Court's order, but as we stated in that motion, we have not had time to verify those numerous allegations that are contained within those requests for admissions and for that reason I wish to say that there is just no possible way I can defend my clients under the circumstances.

JUDGE KERNER: Mr. Byrum, I have consulted with the members of this Court, and it is my understanding, not being a local resident here, that there is—has been considerable public notice concerning the filing of this action—filed in January of this year. The Court feels very deeply a heavy responsibility to the plaintiffs and the rest of the citizens of the State of Indiana. I think the facts and figures will pretty much speak for themselves and I made a statement concerning what the Court has looked at is public knowledge of the 1960 census figures, the census figures as taken by the Census Bureau of the United States and we know exactly what the population is in each of the districts and really, each of the counties of the State of Indiana. We have involved here really a question of both. And certainly, you will be sitting in this matter, you will be hearing the presentation of the evidentiary facts as presented by the people involved in the action here The matters involved in the area of the law, of course, if you are not prepared completely at the conclusion of the actual hearing in this case, there would be certainly nothing to prevent you, with the concern of the Court, to filing legal briefs, we will consider along with any other legal matters as well as the facts presented in the evidentiary hearing. So that your motion for a dontinuance is denied, Mr. Byrum. We will proceed.

MR. BYRUM: If I may, Your Honor, may I—I wish to step aside in view of the Court's ruling from active participation in this case for the reason I am wholly unprepared to present evidence, and I feel I may just garble the record and cause undue delay. I wish to continue to be present and be involved, but Your Honor, I simply—

JUDGE KERNER (Interposing): I don't believe you ought to make that kind of a conclusion at this time. We, of course, do not know what is going to be presented and you may agree wholly with the Attorney General, you may agree with the party plaintiffs, I don't know. I have no more knowledge of the facts in this case than you do.

MR. BYRUM: I think you must, Your Honor, because I don't have very much of the knowledge that was accumulated prior to your denying—

JUDGE KERNER (Interposing): Let me say I have read the pleadings. I do not accept any evidentiary facts, so that I am really in the precise position you are in, but I have had a little longer time to review the pleadings.

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MR. BYRUM: Could the record show we do not concur in any of the admissions heretofore made by the Attorney General's Office. We concur only in those admissions which we made and filed, I believe yesterday, and that we do not consider ourselves bound by rulings made by the Court prior to our intervention in the case.

JUDGE KERNER: May I say, Mr. Byrum, I don't think you can be partially in and partially out. It would be a very admirable way to win a lawsuit. You have asked to intervene. The Court has granted your motion to intervene. You have filed pleadings. You are bound by the record as we find it at the time—as you find it at the time of intervention. I see no other ruling this Court can make under the circumstances.

MR. BYRUM: Okay.

JUDGE KERNER: By the way, I would like to say we will proceed until 12:30 and take recess until 2:00 so that you can prepare such additional things as you need. I realize lawyers work long hours and I am delighted to hear Mr. Byrum abides by a usual lawyer's hours and you will prepare such other material as is needed during the lunch time period. You may proceed.

MR. MANAHAN: Call as our first witness, Mr. John Banzhaf.

JOHN BANZHAF, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name please, and spell your final name for the Court reporter?

A My full name is John F. Banzhaf, B-a-n-z-h-a-f.

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2 Q And what city do you presently reside?

A Reside in Washington, D.C.

3 Q What is your occupation there?

A I am Associate Professor of Law, George Washington National Law Center.

4 Q Are you affiliated with anything other than George Washington Law School?

A I also serve as an executive director of an organization called ASH, Action on Smoke and Health and trustee of LASH, Legislative Action on Smoking and Health.

5 Q Recite your educational background?

A I received a degree, Bachelor of Electrical Engineering, 1962, from MIT with heavy background in mathematics and computer science. I received a degree in law from Columbia University in 1965.

6 Q Have you published any articles relating to apportionment?

A I have published several articles relating to apportionment, some of these are "Weighted Voting Doesn't Work," a mathematical analysis published in Volume 19, *Directors Law Review*, page 317 (1965); "Multi-member Electoral Districts—Do They Violate the One Man-One Vote Principle," Volume 75, *Yale Law Journal*, 1309 (1966). "One Man 3.312 Votes, a Mathematical Analysis of the Electoral College," published in 13 *Villanova Law Review*, page 303 (1968) and several other articles based upon the same work.

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7 Q Have you testified previously as an expert witness in voting apportionment and voting districting cases?

A I have testified in a number of cases involving reapportionment as an expert witness, and others I have appeared as amicus curiae.

8 Q Are any of those reported cases?

A Yes, the cases are reported, the principle case is in Mianucci versus Board of Supervisors, 20 NY 2nd 244, 229 North East 2nd, 195, 282 NY sup 2nd 502, all 1967, many of the lower Court cases are cited in the footnotes of my article on the Electoral College in *Villanova Law Review.*

9 Q In the course of your work, have you had occasion to make any determinations as to weighted voting disparity among multi-member districts at large, where representatives engage in bloc voting?

A Most of my analysis has concerned what would be called standard weighted voting, which is a situation in districts of substantially unequal population, each elect one representative and that representative casts the number of votes, which is roughly proportioned to the population of the district. In such cases, I have shown mathematically that there exists, or can exist, large disparity in the voting power of the legislators. In other words, under such a system, voting power of the legislator is not necessarily apportionment to the number of votes he can cast. This is not directly applicable to a multi-member district situation, if the representative from a single district votes separately and relatively independently, then they are simply casting independent votes; however, to the extent that they may seem to vote together as a bloc on certain issues, their conduct very closely approximates that of a weighted voting system.

In other words, by reference to this case, if we look at the district of Marion County, which has 15 legislators, all elected at large, if these all vote more or less independently on most issues, this aberration or unequal voting power problem does not arise. However, if it turns out that the representatives from a multi-member district like Marion County tend to vote as a bloc at least on certain significant issues, to that extent, their conduct approximates weighted voting and there can be significant deviations from the voting power one would expect, that is, that the voting power of all the representatives in Marion County may not be and probably is not directly proportioned to the number of votes that the representatives can cast.

10 Q Taking separately multi-member districts of different size and with different numbers of representatives, does the voting power of a voter in each district multi-member of different size remain constant and does their voting power, over the election of each individual representative, as the district gets larger, decrease in proportion to such enlargement?

A Perhaps I can answer that in several steps. It might be easier to look at. As I understand it, the theory upon which multi-member districts rests is that if there is a district with a substantially greater population than many of the smaller districts, that we recognize that the voting power of the individual voter in that district is less, is submerged because simply he must share his voting power with a larger number of constituents in his district than those in a smaller district. It is normally presumed that this decrease in voting power is inversely proportioned to the population of the district. Thatis, if district "A" is four times the population of district "B", that a voter in district "A" would have one-fourth the voting power, one-fourth the chance to affect the election of a representative in that district as a person in a smaller district. It is on this basis multi-member district system the larger district would be awarded four representatives, the theory being by giving four representatives you compensate for the voting power which has been divided by four, that the over-all effective voting power and effective representation is equalized.

I believe it can be shown that the first assumption is not true, that as one increases the size of a legislative district, the ability of any individual voter in that district to affect the outcome of the election were to affect indirectly the vote of his representative or representatives does not decrease inversely as the population, but rather as a square root of the population. To go back to the example I gave before where we have a district "A" which is four times the size of district "B", a voter in the larger district would have less voting power than the voter in the smaller district, but it would be less only by a factor of two, not by a factor of four, because the decrease is proportional, is adversely proportioned to the square root of the population rather than to the population, thus if that district is now given four representatives elected at large the residents and voters in that district are in effect over-represented. They have been over compensated, because the decrease in th voting power is not, as we suspected, inversely proportioned to the population, but to the square root of the population. Would you like me to attempt to apply that to the situation here as I understand it?

11 Q Yes, we would.

A I should say that my analysis here is based—

JUDGE KERNER (Interposing): There is a blackboard behind you if you care to use it. You might find—and you find a simplier explanation, you may do it.

A (Continuing) Thank you, Your Honor. I should say, to begin, that my analysis is based upon figures which have been supplied to me with this exhibit; I don't know what the exhibit number is, it appears to be a map of the State, giving the population of the different counties and showing the districts, both for the Senate and the House and it is based upon these figures that I base my analysis.

Just for example, I've selected three districts which elect representatives to the Senate. Marion County, which I understand elects eight senators, Lake County, which I understand elects five senators, and Elkhart, which I understand elects one. In each case, I understand that the number of senators that the county elects at large is supposed to be roughly proportioned to the population of that district, the idea being, in this way, the voting power an effect of representation of all the citizens are equal. I found this not to be true, that the larger districts in general, that is the one with the larger population and the larger number of senators elected at large, are in fact vastly over-compensated and so for example, comparing Marion County with Elkhart, the disparity of my factor was three, in other words, the citizens and residents of Marion County have roughly 310 percent of the voting power an effect of representation of citizen voters in the county of Elkhart, which is another way of saying the over-representation is approximately 210 percent. Comparing the county, Lake County with Elkhart County, the over-representation is by a factor of approximately 2.28. In other words, the citizens and residents of Lake County have approximately 228 percent of the voting power and effect of representation of the citizens of Elkhart, which is simply another way of saying there is an over-representation of 128 percent. I have examined very quickly a number of the other senatorial districts. In general, the pattern is the same, that the larger the district, both in terms of population and in terms of the number of senators elect, the greater is the potential voting power. That is, the voting power under the system as it describes absence of any other factors, and this, I believe, is and would generally be true to all the senatorial districts.

12 Q And is that analysis you made based purely on mathematical population factors?

A It is based strictly on mathematical analysis of the figures which are provided here. The only information which I used was the number of senators who are elected at large from each district and the populations which I have been told reside in the district. I have not deliberately avoided and did not take into account any political or other factors which might affect the actual voting power of the residents, which might include party affiliation, race, previous voting characteristics or any other factors which go into the entire political voting situation.

13 Q Given a county with eight senators as opposed to a county of one, if that county has a heterogeneous political make-up, such as subdividing it into eight parts, would produce different voting results, would such subdivision reduce or eliminate the inequity that you have described?

A The inequity which I have described does not take into account in any way the make-up of the county. The inequity would disappear. That is, the large disparity in voting power in potential were apparent voting power in effect representation would disappear if the senatorial district with eight senators were to be subdivided into eight small districts of approximately equal population each electing one senator.

14 Q It would disappear, then, regardless of whether they continue to vote as a bloc, the senators from that county?

A If they voted as a bloc, this would be something which is not forced upon them or encouraged or made more possible or more likely by the operation of the system, but rather by the independent operation of the political party apparatus, the voters and the geographical distribution of the people in the state. There is no system which can make people vote independently or—I'm sorry—there is no system of which I am aware which can insure that everybody will vote completely inde-

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pendently, nor do I believe anybody really wants such a system. The distinction here is the system which is described here in effect forces or makes much more likely that these eight people will vote as a bloc because they are all elected from the same district, and because they are all responsible to the same elector. I should point out the large disparities which I previously described to you are in no way dependent upon any assumption these people will vote together. There are basically two different disparities which can occur in this system. One is that which is analogous to weighted voting. It occurs if the senators or representatives of a given district tend to vote as a bloc, at least on certain issues. I cannot give you figures on this, because it would require computer analysis to determine.

The other disparity does not depend in any way on an assumption that the senators would vote together. In fact, completely assumes they will vote completely independent. It depends simply on the fact the people are required to elect a large number of senators at large, that the senators all come from the same district and are all responsible to the same elector.

Q Have you had occasion to do a mathematical analysis relating to the Negro vote in multi-member districts?

A In all candor, I have to point out I have not previously done published work in this area. The closest which I have been to this, which has been used elsewhere, is an analysis of the Electoral College running various elector simulated elections to determine how various elector plans would operate. However, I believe some kind of mathematical analysis may be made here, which may make the issues somewhat clear. Here I am basing my analysis on figures which are in one of the memoranda to the complaint, to the effect that in Marion County there are approximately 596,000 white persons and approximately 99,000 non-white or black persons. In other words, the ratio of whites to blacks is roughly six to one in Marion County. In analyzing voting problems of this type, I think the best procedure is to talk about the probability that any voter would vote a given way on a given issue, thus—

MR. JOHNSON (Interposing): At this point I will interject an objection and ask that this particular testimony be stricken on the grounds that the witness can obviously, is qualified to give an opinion, but presumptions, that sort of thing should be removed from the record.

MR. MANAHAN: There is no supposition; the witness has been specific. The injection is not specific. I know nothing he has given so far but qualification limiting the scope of his testimony.

THE COURT: Objection will be overruled, your objection will be noted and will be considered at the conclusion of the hearing of all the evidence. You may proceed.

A (Continuing) Based upon the assumption or belief the ratio of white to non-white in this particular county is approximately six to one I have tried to analyze what would happen in various elections where there existed a difference of opinion as reflected in voting power between the whites and non-whites, if such a difference existed. This can

[42, 43]

mathematically be represented in terms of a probability. That is, that on a given issue a black person, or Negro person, would have, say, a probability of 75 percent to vote one way or pull one candidate; 25 percent the other way, whereas, as a non-black or white person would have a different probability, say, 50 percent either way or 60 percent, 40 percent. Analysis indicates that even if all of the Negro members, that is, 100 percent had a 1.0 probability of voting a given way, that is that each and every single one would vote such a way, their wishes would be defeated if as little as—if the remainder of the population, that is, the white population had a probability as low as .95 of voting the other way. That for example if the Negro residents and voters, on a given issue, had a probability, say, of .8 percent of voting a given way on a given candidate, their wishes would be defeated if there were a corresponding opposing probability on behalf of the white people of as low as 55 percent.

That, to take one further example, if approximately 55 percent of the Negro population favored one proposal, that their wishes would be defeated if the white population disapproved of it by as little as, say 51 percent margin. I think it's important to understand this would occur only where there is in fact a difference between the majority vote of the whites and majority vote of the nonwhites, but in the situation, which I believe, is the one which we are primarily interested, even an over-whelming vote or over-whelming probability of a vote in one direction by the Negro community would be completely submerged or wiped out be even this very small 52, 53, 57, 59 percent probability of voting the other direction by whites in the same district.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. RICHARD JOHNSON

16 Q Your measurement of voting power is not a measurement of actual voting powere as I understand your testimony; is that correct?

A No, it certainly is not, and perhaps I can—I should point out the distinction rather clearly, if I may, by analogy.

17 Q Perhaps your counsel can ask you on re-direct to that question if it needs clarification. It seems to me the main objection, if I may, to your testimony is that it is somewhat hypothetical and somewhat theoretical. For instance, my questions to you would be, does your techniques take into consideration factors such as dominance of a political power, political party, within a particular district?

A Again?

18 Q My question would be, does your mathematical formula take into consideration the dominance of a political party within a particular district?

A No, sir, deliberately excludes any such consideration.

19 Q Would the influence of advertising or television have any influence on your formula?

A None whatsoever.

[44, 45]

20 Q Such insignificant things as weather influences; would that be considered?

A No, sir.

21 Q Now, upon what figures do you base your formula?

A The formula or technique of analysis simply seeks to analyze the potential voting power determined solely by the system and by the system I mean the rules and laws which govern theoperation of the election and the populations of the districts.

22 Q What figures have you used in applying your formula to the State of Indiana in comparing various districts?

A I have used figures contained on a map, which purports to show the State of Indiana, the 50 districts for election to the Senate, the 100 districts for election to the House and the population of the 92 counties as of the 1960 census; I have no information of my own as to the background of this or its reliability.

23 Q Therefore, your figure, population figures at least are according to the 1960 census?

A That is correct.

24 Q Have you taken into consideration such things as population mobility?

A No, sir, they are based on the 1960 census.

25 Q Do you know the numbers of people that have moved into one particular district or who have moved out?

A No, sir.

26 Q How many districts have you compared?

A I believe I looked at something like 10 in the Senate probably 5 in the Senate and 10 in the House, but you see, the—

27 Q (Interposing) Excuse me, do you know how many districts all told there are in both the Seante and the House?

A I understand there are 100 districts in the House and 50 in the Senate. The analysis simply depends on the fact that the number of representatives from a district is roughly proportioned to the population and as long as that holds true, there is a general tendency for the people in the larger districts to be greatly over-represented. This would not change if they were small shifted into population. It would, of course, change if they were measured shifts, like 50, 75 percent in many of these districts.

28 Q What line would you draw between a small shift in population and a major shift?

A I wouldn't have to draw a line for any given shift. I can say approximately what the change would be, it would be proportion to the square roots of the shifts, if you have a shift of 50 percent in population the change in disparity would be approximately in the neighborhood of 30 percent.

29 Q Do you know what shifts in population have occurred in Marion County since 1960?

A No, sir.

30 Q One final series of questions. Could not a computer using your mathematical formula devise a number

of plans, for instance, for single-member districting of Marion County?

A I know of computer plans which I believe could be used to divide Marion County into a number a single-districts, yes.

31 Q Could not a number of plans be devised which would meet the requirements of your mathematical formula but have very political impact?

A If there are no other restraints an infinite number of such plans would be devised. I am sure many of them would have political impact.

32 Q Yet all of these plans would have an acceptable alleviation in accordance with one man-one vote?

A They would be acceptable in the sense they would not show deviations under my analysis. I would believe my analysis is not the only criteria by which a plan would be judged one of several.

33 Q Would you categorize the selection of such a plan as a legislative or judicial function or both?

MR. MANAHAN: Object to the—objection, characterizing matters of, it is for the Court and not for the witness.

MR. JOHNSON: Withdraw the question.

34 Q Mr. Banzhaf, in your opinion is it not reasonable to assume that a party in power would select a plan which would tend to perpetuate itself?

A I think it's outside of my area of expertise, but I will answer it if you wish.

35 Q Is this not the very argument of gerrymandering we are getting into?

A My analysis, at least, does not concern gerrymandering. One could, of course, produce disparities in an actual voting power by gerrymandering, but my analysis would not reach that. My analysis reaches only a more basic, a more flagrant violation, one which is built into the system regardless of how people of different political persuasions or racial background, whatever, may be distributed among the districts. It depends simply on the way you chop up the State into unequal sized districts and multi-member districts.

36 Q One final question. You say it is normally presumed that there is a square root inverse ratio?

A No, sir. I believe I testified it is normally presumed that there is an inverse ratio, that if you double the size of the district, voting power is divided by two. If you triple the size of a district, voting power is divided by three.

37 Q Where did you say is normally presumed there is an inverse ratio according to the square root?

A This is not a presumption, this is something I believe I have been able to show by mathematical analysis, by applying reasonably well established techniques of both mathematical and political scientific analysis.

38 Q Would you say the mathematical application of these techniques, based on figures which are at this point, nine years old, not taking into account such factors as mobility rates within the districts compared is a valid criteria for this Court to judge?

MR. MANAHAN: We will object. The Court will determine the criteria and the validity thereof. He is again asking the witness to take the role of the Court.

THE COURT: We may not know whether the reference may be produced or stipulated as to population figures. We would all keep this in mind.

MR. JOHNSON: I have nothing further, Your Honor.

RE-DIRECT EXAMINATION

QUESTIONS BY MR. JAMES MANAHAN

39 Q Mr. Banzhaf, in cross examination you produced a document when Mr. Johnson asked you what facts you had been using in your analysis. Could you leave that with us and we would send you a copy?

A I would be very happy to.

MR. MANAHAN: We would like to mark Exhibit 66, offer in the record simply as to what the witness was relying upon when he gave his testimony.

MR. JOHNSON: I have no objection.

THE COURT: It will be received.

JUDGE STECKLER: What is the number of the exhibit?

MR. MANAHAN: 66.

THE COURT: You may be excused.

(Witness excused)

WILLIAM SCHREIBER, a witness called by the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

MR. MANAHAN: I would say to the Court, Your Honor, before the Court left to reach its ruling on the motion, they instructed counsel on both sides to attempt to reach some agreement on the exhibits and the charts. What agreement we have reached is this: We are putting the author of these charts on the stand without first introducing the underlying documents and simply going to seek to get them through without objections and find out what happens.

1 Q State your name please.

A William Matthew Schreiber, S-c-h-r-e-i-b-e-r.

2 Q What is your occupation?

A Legislative Assistant, Congressman Andrew Jacobs, Jr.

3 Q How long have you been so occupied?

A Since January 1st this year.

4 Q What was your occupation before that?

A I was a stock broker for Thompson & McKinnon.

5 Q Have you done any other work in relation to political offices and public office in Marion County?

A During the year of 1965, I was Chief Deputy for the Democratic party in voters' registration in this county.

6 Q Have you become acquainted with the papers and documents used in various local public offices in normal course?

A I have.

7 Q Were you given a copy by co-counsel of this Court's order of May 12, 1969?

A I was.

8 Q And pursuant to the numbered request of the Court, have you prepared various charts and diagrams?

A Yes.

9 Q I will show you exhibit 1 and ask you what that is?

A That is a map of the census tracts according to the 1960 census in Marion County in Indiana.

10 Q Where did you get the information you used for drawing that chart?

A I got the information from the maps obtained from the Metropolitan Planning Department in the City-County Building and also the maps contained in various census books of 1960.

11 Q And did you accurately, to the best of your ability, draw the census tracts on the basis of that information?

A Yes.

MR. MANAHAN: We offer Exhibit 1.

MR. JOHNSON: No objection.

THE COURT: It will be received.

12 Q I will show you what has been pre-marked Exhibit 4, both Exhibits 4 and ask you what those are?

A Those are maps of the political wards and precincts in this county.

13 Q And where did you obtain those maps?

A I obtained them from the Voters' Registration Department of Marion County.

[53, 54]

14 Q And are they used in normal course by the Voters' Registration Department for determining in what ward and precincts the registrant lives?

A That's correct, also by the Marion County Election Board.

MR. MANAHAN: We offer the Exhibits 4 in evidence.

MR. JOHNSON: No objection.

THE COURT: They will be admitted.

15 Q I will show you Exhibit 5 and ask you what that is?

A That's a map of Marion County showing what addresses representatives live when they file their candidacies for the House of Representatives in 1968.

16 Q And where did you get the information with relation to that map?

A The information came from the Secretary of State's Office, from the filing documents of the House.

17 Q So, does this show the address which the person gave at the time they filed in the primary?

A That's correct.

18 Q And I will ask you in relation to Exhibit 5B, what is it?

A That is a map denoting the addresses which representatives lived when they filed for the House of Representatives in 1966.

19 Q And are the same facts true of that exhibit as 5A?

A It is.

[54, 55]

20 Q I show you Exhibit 5C and ask you if your answers will be any different to the question asked with relation to 5A and B except to the year which it applies?

A They would be no different.

21 Q And it applies to the year 1964?

A That's correct.

22 Q And I will show you Exhibit 5D and ask you if it differs from the previous exhibits A, B, C, other than it applies to the year 1962?

A Everything would be the same, except for number 12 which indicates one representative, a joint representative lived outside Marion County.

23 Q And I show you Exhibit 5E and ask you the same question I asked you with respect to 5D?

A All the same again. A joint representative living outside Marion County.

MR. MANAHAN: We offer in evidence Exhibits 5A through E.

MR. JOHNSON: We have no objection to the maps showing the residences of representatives elected in '66 and '68, however, we would object to maps showing the residences of the elected representatives in the years '60, '62, and '64. The basis for this objection is that those maps to which we objected to are not relevant in light of the case of Stout against Bottorff, determining that Marion County district is in fact constitutional and it does in fact meet the requirement of one man-one vote.

THE COURT: Mr. Johnson, do you take any issue as to the authenticity of what the exhibits

[55, 56]

would represent, the residences of the actual representatives elected in those elective years?

MR. JOHNSON: Judge Kerner, the accuracy of none of the maps being offered into evidence is being challenged or questioned at the present time. It's a question merely of relevance in the light of the case of Stout against Bottorff, which was decided in 1965.

THE COURT: Your objection will be overruled. They will be received for what they represent to be and be received in evidence.

24 Q Mr. Schreiber, I will show you three marked exhibits, 5A, 5B, 5C, 5D, and 5E and I will ask you if the testimony you gave in relation to Exhibits —excuse me, let me amend what I've been saying. I've been referring to 5A through E. I have been showing the witness Exhibits 6A through E. I will ask you if the same questions were asked of you in relation to 6A through E, would the same answers apply except that the exhibits marked 6A through E apply to the Indiana Senate?

A That's right.

MR. MANAHAN: We offer Exhibits 6A through E.

MR. JOHNSON: The same objection, Your Honor.

THE COURT: The objection is overruled.

25 Q I will show you Exhibit 7A and B and ask you what that is?

A That is a map of Indiana representative districts, representative districts for the 1966 and 1968 election.

26 Q They were both under the same apportionment those two years?

A That's right.

MR. MANAHAN: We offer Exhibits 7A and B.

MR. JOHNSON: No objection.

27 Q I will show you what is pre-marked Exhibit 7C and ask you what that is.

A That is a 1964 apportionment of the House of Representatives for Indiana.

MR. MANAHAN: We offer in evidence Exhibit 7C.

MR. JOHNSON: We would object to that on the ground previously stated.

THE COURT: Objection overruled. It will be received in order the record may be more clear, at this point, as more of a historical value than for any other purpose.

28 Q I show you Exhibits 7D and E and ask what that is?

A That is a 1960 and 1962 apportionment of the Indiana House of Representatives.

MR. MANAHAN: We offer Exhibits 7D and E.

MR. JOHNSON: Same objection.

THE COURT: Same ruling.

29 Q I show you Exhibits 8A and B and ask you what that is?

A That is a 1966 and 1968 apportionment of the Indiana State Senate.

MR. MANAHAN: We offer Exhibit 8A and B.

MR. JOHNSON: No objection.

30 Q Show you Exhibit 8C and ask you what that is?

A That is 1962 apportionment of the Indiana State Senate.

31 Q I show you Exhibit 8D and E and ask you what that is?

A That is 1962 apportionment of the Indiana State Senate.

32 Q I show you Exhibit 9 and ask you what that is?

A Those are the five ballots from the last five general elections, color coated green indicating candidates for the legislature that were elected, red denoting incumbents running in that election.

MR. MANAHAN: We offer Exhibit 9.

MR. JOHNSON: I'm sorry I didn't understand what the exhibit was.

MR. MANAHAN: This involves—

MR. JOHNSON: '68 election?

MR. MANAHAN: No, all five years.

MR. JOHNSON: We renew our objection.

THE COURT: Same ruling.

33 Q I show you what is marked Exhibit 12 and ask you what that is?

A This is population by census tract for Marion County, total population and percentage by race, the three categories there being white, Negro and other.

34 Q Where did you get those figures?

A United States census of 1960, there is one correction the judges should be notified of.

35 Q And you have cross-checked these percentages calculated?

A I have.

MR. MANAHAN: We offer Exhibit 12.

MR. JOHNSON: No objection.

36 Q Show you Exhibits 5 and 6 and ask you what that is?

A These are the names of all senators and representatives elected from 1960 through 1968 with their addresses, parties, race and prior experience, prior assemblies.

MR. MANAHAN: We offer Exhibits 5 and 6.

MR. JOHNSON: Same objection.

THE COURT: Same ruling.

37 Q I believed in missed in offering some exhibits.

MR. MANAHAN: We would offer—we offer Exhibits 8D and E.

MR. JOHNSON: Same objection.

THE COURT: Same ruling.

38 Q Have you had occasion to prepare a compilation of votes for general assemblymen in the general election, going back to 1920 in Marion County?

A I have.

39 Q Do you know where that is? Where did you get the information for—from which you made that compilation?

[59, 60]

A From the Secretary of State's Office and the Marion County Election Board.

40 Q What particular records did you consult in making that compilation?

A Records of various elections back to and including 1920.

41 Q I show you Plaintiffs' Exhibit 10 and ask you what that is?

A These are the typed records of all elections for both the House and the Senate in Indiana from 1920 through 1968. It includes party, race, vote and has certain percentages figured on high totals, low totals, and differences by percentage.

42 Q Have you had occasion to see the underlying documents in the Secretary of State's Office from which you derived these figures in the courtroom today?

A Yes.

43 Q Did you assist in pre-marking them as exhibits?

A I did.

MR. MANAHAN: We offer Exhibit 10 in evidence.

MR. JOHNSON: May I ask a preliminary question?

THE COURT: You may.

QUESTIONS BY MR. RICHARD C. JOHNSON

44 Q Mr. Schreiber, are the records in the Secretary of State's Office kept according to race?

A I'm sorry?

[60, 61]

45 Q Are the records from which you derived, the records in the Secretary of State's Office from which you derived this exhibit kept by race?

A They are not, they are not.

46 Q How was that information obtained?

A That was obtained from persons who recalled the past 50 years or parts thereof and who recognized —

MR. JOHNSON: I will have to object to the exhibit as being heresay.

MR. MANAHAN: We would agree to eliminate that, that the race can be disregarded.

THE COURT: It may be received under those circumstances.

MR. JOHNSON: I have one further objection, Your Honor. We would renew our objection we have previously stated to the other exhibits as anything prior to 1965.

THE COURT: The objection is noted, same ruling.

MR. MANAHAN: This is all I have of this witness for this purpose.

THE COURT: Do you have any questions, Mr. Johnson?

MR. JOHNSON: No questions.

THE COURT: The Court will recess at this time and reconvene at 2:00.

(Court recessed at 12:35 P.M., reconvened at 2:05 P.M. and the following proceedings were had)

[61, 62]

BERNADETTE BARRY LEHMAN, a witness called by the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name to the Court, please, and spell same to the court reporter.

A Bernadette L-e-h-m-a-n.

2 Q What is your occupation?

A I am a case worker for the Marion County Department of Public Welfare.

3 Q Prior to that occupation what did you do?

A I was research assistant for the Community Service Council.

4 Q Is that the Community Service Council of Metropolitan Indianapolis, Inc?

A Yes.

5 Q As such assistant did you prepare a booklet based on census statistics and other social statistics applicable to Negroes and Negro housing and Negro conditions in Marion County, Indiana?

A I did.

6 Q Do you have such a book with you?

A Yes, I do.

7 Q I hold before you exhibit 11 and ask you what that is?

A It's the book that I wrote entitled The Negro in Indianapolis.

[63, 64]

8 Q The tables that were compiled in this book, were they compiled by you and others?

A Yes, they were.

9 Q Based on what sources, the sources' names underneath the compilation?

A Yes.

10 Q Were these compiled in contemplation of a lawsuit or purely as a study of a condition?

A It was purely a study.

11 Q And compiled by you?

A Yes.

12 Q Were the results cross-checked?

A Yes, they were.

13 Q By whom?

A By myself and the other people working on the project.

MR. MANAHAN: We offer Exhibit 11, representing the chart, pages 19 through 21.

MR. JOHNSON: I ask permission of the Court to ask a preliminary question.

THE COURT: Granted.

QUESTIONS BY MR. RICHARD C. JOHNSON

14 Q Mrs. Lehman, were there any other sources of information besides the 1960 census you used in compiling this book?

A Yes, there were, they are all listed in the bibliography at the end.

15 Q Can you give us a general idea how many other sources were used?

A I believe there were between 20 and 30.

16 Q Can you give us some—give the Court some idea of what some of those other sources were?

A Yes, the Indiana Commission on Human Rights had published several documents, we summarized those documents. The United States Census had published other documents that we used too.

17 Q Prior census, I suppose I should say to 1960?

A Yes.

MR. JOHNSON: We will object to the introduction of the booklet on the basis it is not relevant because it has material that was compiled by other persons prior to the 1960 census. It is further not relevant because the matter, material and figures were used prior to the decision of this Court in 1965. We also object to the introduction of the booklet because it is based on hearsay.

THE COURT: May we see the document, please?

MR. JOHNSON: May I have permission of the Court to add one further ground. Since this is not a class action the title or subject matter of the book is not relevant to the issues at hand.

THE COURT: The objection is overruled and the Exhibit will be received. However, the Court will look at the weight of it and its historical background, such value as it may have at the time it analyzes the facts and the evidence in the matter.

MR. MANAHAN: I have no further questions of the witness.

MR. JOHNSON: I have no further questions.

(Witness Excused)

LYNDA LEARY, a witness called by the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name, please.

A Lynda Leary.

2 Q Are you related in any way to the League of women Voters?

A I am the immediate past president of the League of Women Voters.

3 Q Did that cover the year of 1968 to the present?

A Yes.

4 Q During that year did you have occasion to make a regular inquiry among General Assembly candidates as to their stand on various issues?

A Yes, we did.

5 Q How was this inquiry made?

A A letter was sent to all candidates as soon as they had filed intention and then it was done again after the primary to those who won the primary. A committee of the members compiled questions they thought were pertinent in the areas and they were asked to return these with a yes-no answer.

6 Q Did you participate in sending out this questionnaire?

A Yes.

7 Q Did you participate in compiling the questions?

A Yes.

8 Q I will show you Exhibit 34 and ask you what that is?

A That is a copy of one page of the candidates' questionnaire.

9 Q Covering what candidates?

A The legislative candidates, House and Senate.

10 Q Does it cover the stand taken by those candidates of the present General Assembly that were victorious in that election?

A Yes.

MR. MANAHAN: We offer in evidence plaintiffs' Exhibit 34.

MR. JOHNSON: We will object again to the introduction of plaintiffs' 34 on the ground it is hearsay.

MR. MANAHAN: We submit it is not hearsay and the position which the candidates take giving the testimony as to bloc votings. On its face it will show its relevancy to this case and what the candidates in fact did is a matter of direct evidence in this case.

THE COURT: Mrs. Leary, you were president of the League of Women Voters locally here at the time of the compilation of this document?

THE WITNESS: Yes.

[67, 68]

THE COURT: We you supervisor of this compilation?

THE WITNESS: Yes, I was.

THE COURT: The exhibit will be received.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. KENT FRANDSEN

11 Q Mrs. Leary, was there an opportunity for these candidates to qualify their response to these questions propounded to them?

A Yes, there was. As a matter of fact, you will notice some of them have an 'S' after their name under a particular statement. That means they were not happy with just a yes or no and they do have a statement on file at the League office, but the newspaper did not have room to publish the entire statement.

MR. FRANDSEN: I have no further questions.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

12 Q Did the statements differ that had an 'S'?

A You mean individually or did they differ?

13 Q Yes.

A Other than we did not receive all of the individual questionnaires from those who were successful candidates, we received a small number, I would say eight of them, then their chairman sent a letter to us stating they would vote as a delegation and answer as a delegation and that we were to disregard the individual statements received prior to this letter.

MR. MANAHAN: Thank you very much.

RE-CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

14 Q Mrs. Leary, this response that you just testified to, did this come from the chairman of both political parties?

A No, it came from not the party chairman but the successful delegation chairman. He sent a letter to the League of Women Voters stating that we were to disregard any previous questionnaires received from their delegation and to use only the one that was sent from the entire delegation. We weren't very happy about doing this and we did have lengthy discussions with him concerning it, but they felt strongly that, and I am quoting, "they were teamed and would answer as a team."

15 Q Mrs. Leary, am I correct in assuming this sharply reflects the percentage or number of representatives that responded and did not respond or qualified response to those particular questions propounded to them?

A Well, if I understand your question correctly, the successful candidates are answered here with one blanket statement as per the request of their delegation chairman. Now, with the unsuccessful candidates you will notice on the chart there are, I believe, six who said after their name is written 'did not answer' or 'no answer'—'did not answer', they never filled in their questionnaire, although they were phoned and it was requested of them. They, as individuals, did not feel they wanted to participate in this particular publication.

16 Q The leader, you referred to the leader of the delegation, was this leader elected by the delegation?

A I believe so. Dr. Borstum was the gentleman my contact was with.

MR. FRANDSEN: I have no further questions.

MR. MANAHAN: I have no further questions.

(Witness Excused)

SAMUEL LESH, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name, please.

A Samuel Lesh, L-e-s-h.

2 Q What is your present position, Mr. Lesh?

A Director of the Department of Law of the Indiana Legislative Counsel.

3 Q As Director of that Department do you have custody of the bills passed and acted upon by the Indiana General Assembly?

A I do.

4 Q Were you subpoenaed today?

A I was.

5 Q Did your subpoena direct you to bring with you certain bills?

A Yes.

6 Q Do these include House Bill 1785, 1969, 1529, 1760, 1827 and Senate Bill 543 and Senate Joint Resolution 26 of the 1969 General Assembly and the Roll Call votes cast thereon?

A It did.

7 Q And have you brought them with you?

A I have.

8 Q May I see them?

A Yes.

9 Q Are exhibits 19 and 24, 20 and 24, 21, 22 and 24, 23, 24, 18, 24, and 17, those bills you named in response to the last question?

A Right.

10 Q And have these been kept in the normal course of business in your office?

A They have.

11 Q Is it the normal course of business for your office to maintain custody over all enactments of the Indiana General Assembly?

A Not the original copies that are filed by the Secretary of State but duplicate copies, yes.

MR. MANAHAN: We offer the exhibits in evidence.

MR. JOHNSON: May I ask a preliminary question?

THE COURT: Yes.

QUESTIONS BY MR. JOHNSON

12 Q Mr. Lesh, I have a list of the Chapter number but not by Enrolled Bills so may I ask you was Chapter 298 among the Civil Rights Bill among those you introduced?

A I couldn't identify by subject, the only thing I had to go by was what the subpoena called for me to bring.

MR. MANAHAN: I will represent it is not among those. We would have no objection to its introduction.

MR. JOHNSON: Chapter 173, Unigov Bill, is?

MR. MANAHAN: It is among those as is the bill which attempted to divide Gary, two bills for a single-member districting, the joint resolution for single-member districting, and bill providing for multi-member district of the Marion County Council.

13 Q Chapter 105 pertains to lending, making of loans for repair of substandard housing?

MR. MANAHAN: I will represent that was not among them.

MR. JOHNSON: Nothing further and we have no objection to the introduction of these exhibits.

THE COURT: They may be received.

MR. JOHNSON: Just a question or two on cross examination.

[73, 74]

CROSS EXAMINATION,

QUESTIONS BY MR. RICHARD C. JOHNSON

14 Q You are here in response to a subpoena, is that correct?

A That is correct.

15 Q And that subpoena listed the numbers of the House Enrolled Bills which you brought with you, is that correct?

A With sufficient accuracy for me to make correct identification.

16 Q There were many bills you didn't bring which were passed by the 1969 General Assembly in which application is in this particular district?

A That I wouldn't know.

17 Q You say you would or would not?

A I would not know.

MR. JOHNSON: I have nothing further.

MR. MANAHAN: I have no further questions.

(Witness Excused)

PATRICK CHAVIS, one of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name, please.

A My name is Patrick Chavis.

2 Q Your occupation?

A I am an attorney.

3 Q How long have you been an attorney?

A I was admitted to practice in the State of Ohio in in the year 1947 and in Indiana in the year 1948.

4 Q Are you Patrick Chavis, plaintiff in this cause?

A I am.

5 Q State your race.

A I am a Negro.

6 Q Where do you presently practice law?

A In the City of Indianapolis.

7 Q And where in Indianapolis?

A At 308 Walker Building.

8 Q Is that on Indiana Avenue?

A That is on Indiana Avenue.

9 Q Are you acquainted with the area defined in the complaint as the Ghetto Area?

A I am.

10 Q Is that address within that area?

A It is.

11 Q How long have you practiced at that address?

A I have practiced law there since September of 1963.

12 Q Prior to that did you practice law within what is defined as the Ghetto Area?

A I practiced law at the corner of Illinois and Ohio

Street, and again at 14 West Ohio Street, all within what I would call the Ghetto Voting Area in Indianapolis.

13 Q What type of a practice do you have as relates to business or to other aspects?

A I like to say I am a human relations lawyer rather than a property lawyer.

14 Q Does your practice include a lot of divorces?

A Divorces, small criminal matters, small loan company matters, garnishments, welfare matters, a general type of practice that attempts to meet the needs of the community with which I identify myself.

15 Q About what percent of your clients would you believe live in the Ghetto Area?

A Approximately 85 to 90%.

16 Q Has this been the case throughout your law practice in Indianapolis?

A It always has been the case.

17 Q And how many clients a year do you handle in the way of cases involving what you call "human problems"?

A I have no idea, but I would want to estimate it in the 20 years I've practiced law I have tried at least 3,000 cases, so averaging off, I suppose I try 300 to 350 cases of various kinds a year.

18 Q Have you ever run for office?

A I was a candidate for the Indiana State Senate in 1964.

[76, 77]

19 Q And have you participated in any other campaigns?

A I have participated in every campaign of any kind since coming to Indianapolis in 1947.

20 Q What was your initial participation?

A My first political experience was in 1948 campaign, in which I was a member of the Speakers Bureau of my political party.

21 Q Have you ever been Precinct Committeeman?

A I have served as a Precinct Committeeman for the last nine to 10 years.

22 Q Have you ever been a Ward Chairman?

A I have been a Ward Chairman on two occasions; once I was what they call Co-ward Chairman of the 20th Ward, and I am presently serving as Ward Chairman of the 3rd Ward in Indianapolis.

23 Q Do you regularly make lectures in the Ghetto Area and have consultation with persons regarding social problems?

A I have felt, Mr. Manahan, with any trained black man owes his allegiance to those members of his race who are less fortunate than he was, so my entire career has been one of attempted service to my people in Indianapolis and anywhere else I could see it possible for me to help.

24 Q Based upon your experience, both as a legislator and in the Ghetto Area as a legal practitioner, do you have an opinion as to the type of social interest which the typical voting in the Ghetto Area has?

MR. JOHNSON: At this point, we object because the witness is not qualified.

THE COURT: The Court would ask that question be stated again.

25 Q Based upon your experience as a legal practitioner in the Ghetto Area and resulting from the human contact you have had in the course of that practice and the course of other social work you have done in that area, do you have an opinion as to whether the people of the Ghetto Area have particular social and political interest?

A I do.

THE COURT: Strike the answer until the Court rules on the objection. The objection is overruled. The witness may answer the question.

A I do.

26 Q Do they have any such particular interest in the area of employment security?

A They definitely do.

27 Q Could you describe the nature of that interest?

A In the traditional experience with black community is the kind of work done more by them than anywhere else is seasonal work which means they are traditional layoffs every winter and every fall. In my career, I have found that there is many times a great deal of difficulty not only with the attitude of the people who administrate the employment security offices that service this area, but with the law itself, it has not been comprehensive enough to meet the true basic needs of many people with the Black Ghetto community.

28 Q Do they have such interest in the area of public welfare?

A They certainly do.

29 Q Is public welfare in Marion County controlled in its structure by local law or by State law?

A It is controlled by State law, Mr. Manahan.

30 Q Is the taxation support for public welfare at the township or county level in Marion County?

MR. JOHNSON: We will object to that question. We are getting in the area where I would respectfully submit the witness is not qualified to answer. Furthermore, the question calls for a conclusion.

MR. MANAHAN: Actually, I'm just asking what the statute does and it's the State Statute that controls.

THE COURT: The witness is an attorney, the Court presumes he knows what the law is. He may answer the question.

A Will you repeat the question, Mr. Manahan?

31 Q Does State law provide for taxation support for Marion County Public Welfare or the taxing district township-wide or county-wide?

A District—

MR. MANAHAN (Interposing): Or township-wide?

32 Q And for the supervision of the distribution of welfare, Marion County is a township-wide or county-wide?

A It is county-wide and controlled by the Circuit Judge.

[79, 80]

33 Q Are there any particular interests manifested in the people in the Ghetto Area of Public Welfare?

A There certainly are.

34 Q What are they?

A The fact that traditionally, for years, officials of our county Welfare Department have failed to realize that the fact that a man is poor has nothing to do with his indolence or his lack of effort or his lack of training, but that poverty is very likely an impersonal social matter over which many of the poor have no real control. In view of that fact, the attitude toward the poor expressed on many occasion by the Marion County Department of Public Welfare has been most reprehensible. Detectives have been hired to hide in bedroom closets to see whether men were there, widows and orphans have been tracked down. Every once in a while people issue a statement about folks ought to go to work and the whole welfare program, to a large extent in my judgment, has failed and missed what I consider its real significance and that is the fact it's one of the blights we face here in America and it's going to take broad sympathetic compassion and action on the part of people to do something about it.

MR. JOHNSON: Your Honor, at this time I move to strike all of the witness's testimony as being not responsive to the question, it's more in the nature of a speech than it is an answer.

THE COURT: The objection is sustained and the announcement will be stricken.

[80, 81]

35 Q Would you consider the question again and deal with the problem from the State and legislative viewpoint?

A In my judgment, I might have been caught up in my enthusiasm a moment ago, but I would like to say this to the Court: I think the black Ghetto community has much the same impression as I do about the Welfare Department, which I have just stated.

36 Q What significance can this have at the State Legislative level?

A Because the State Legislature can change the program, they can make it possible for people to be elected to the Board of County Welfare or appointed from districts. Some of them from the districts that welfare serves the most this the legislature has failed to do.

37 Q In the area of small loan company regulations, do you have an opinion as to whether their particular legislative interests are felt by the Ghetto?

A They certainly are.

38 Q State what they are.

A Particularly in the area of deficiency judgments, wherein and in the matter where personal property is bought through small loan companies, repossessed, resold and then a deficiency judgment gotten, which is later enforced by the State Garnishment Law. This happens to a great extent in the Ghetto Area.

39 Q In the area of consumer protection, is there a particular voter or social interest as felt by the people of the Ghetto Area?

A I think people are interested in knowing what they buy, they are interested in being protected from shoddy merchandise and unfair credit charges, and so forth.

40 Q Is there any such interests would rise to legislative level which is unique to the Ghetto Area?

A Unique to the Ghetto Area in the sense the poverty-stricken and the poor are those who are faced with those kind of problems almost to the total exclusion of anybody else.

41 Q In relation to the area of Health and Hospital Corporation in Marion County, is that controlled at the local level or by State law?

A It's by State law.

42 Q And is there any particular interest on this point by the people in the Ghetto Area?

A There is, Mr. Manahan.

43 Q What is it?

A The fact that the Health and Hospital Corporation of Marion County, which controls all of the public and health con—has a board which is not representative, at least has no representation for persons in the Ghetto Area and this board is ordained by State statute.

44 Q Is there a particular interest in the Ghetto Area in the matter of building regulations and to the extent they can be controlled at the State legislative level?

A I think there is.

45 Q Describe what it is.

A In the very standards which slum housing, which have been applied to slum housing compared with housing in other areas in the general community, this is, of course, Indiana controlled by State legislature because all law, all cities, all powers which cities have are given by State statute.

46 Q Is there a particular social problem in relation to the enforcement and forcibility regulations in codes in the Ghetto Area?

A There is a social problem, Mr. Manahan, which reflects itself into these, which reflects itself in poor housing and poor living conditions.

47 Q As a primary ownership in the Ghetto Area, are the inhabitants of that area owners of property in that area?

A It depends upon what portion of the Ghetto Area you are talking about.

48 Q Residential portion.

A A large portion of the residential portion of the Ghetto Area is owned by absentee landlords.

49 Q Has there been a problem securing, having code enforcement in those areas?

A There has been.

50 Q In the area of thoroughfare plans, is this handled at the State level?

A It has been handled at the State level.

51 Q Did it become an issue while you were general assemblyman?

A It became a very vital issue.

52 Q With respect to the Ghetto Area?

A Yes.

[83-85]

53 Q Will you describe the facts which attended that issue and the consequences it had in the Ghetto Area?

A It was a general feeling that persons in the Ghetto Area that the vast displacement of families and homes was unnecessary. It was also the feeling of the persons in the Ghetto Area that the very route of the thoroughfare was one which was discriminatory, because the route purposely avoided the Woodstock Country Club and very exclusive White residential area in Indianapolis and went some distance to avoid this and went clearly through the entire Negro area, displacing thousands of families in this community.

MR. JOHNSON: I move to strike the answer as being conclusion of witness on a particular subject that is conclusionary on the part of the witness.

THE COURT: Objection sustained.

54 Q Did you participate in this legislative debate relating to this thoroughfare?

A I participated in legislative action relating to the thoroughfare and also in community protest on every level possible.

55 Q We will get to your role as a legislator later. One further area: Is there any particular interest in State Civil Right Legislation by the people of the Ghetto Area?

A What kind of Civil Right Legislation are you talking about?

56 Q Legislation which goes under that title when introduced and discussed in the General Assembly.

A There is some interest. I might say that interest is lastly; the community doesn't seem to be as much concerned as it used to be with buying a cup of coffee, but it's much more concerned with having a seat at the table where the community is really run.

57 Q In comparison to the other social issues which you have gone into category by category, does Civil Rights stand as a burning interest in the Ghetto Area?

A It certainly does not. As I have stated, Mr. Manahan, 15 years ago people in the Ghetto and Negroes in general were concerned with the outward facilities of segregation discrimination, where you could eat in a restaurant, where you could buy a cup of coffee, now all that is past and the main concern of citizens, black citizens everywhere, is to have the same voice in the control of their affairs as any other man does.

MR. JOHNSON: We will ask the answer be stricken as not being responsive and inferring motive and attitude of voters regarding certain legislation. The witness is simply not qualified.

THE COURT: The answer will be stricken.

58 Q Without going into the why's—

THE COURT (Interposing): Mr. Chavis, I don't want to interrupt with your testimony. By trying to respond to these things in a positive matter, it is so easy to get confused with the philosophies and I can appreciate the difficulty in answering these questions, but try to to make them as factual as you can without getting into the philosophical and argumentative area.

THE WITNESS: Your Honor, I'm going to do my very best.

THE COURT: I say it's difficult. We all appreciate that.

THE WITNESS: I would like to say this to the Court: One of these things I would like to convey is that these things no longer philosophical in many instances, but are practical.

THE COURT: Let me say, they are certainly argumentative as well, as you can understand from objections of counsel and my comments here.

59 Q Yes or no, is there much interest in the way of State Civil Rights legislation in comparision to the other areas you have gone into in the Ghetto Area?

A No.

MR. MANAHAN: We are asking the Court to take judicial notice of the Indiana Acts 1885, Chapter 47, Section I, page 76, a very brief statute which I would like to read:

"All persons within the jurisdiction of such State shall be entitled to the full and equal enjoyments of the accommodations, advantages, facilities and privileges of inns, restaurants, eating houses, barbershops, public conveyances on land and water, theaters and all other places of public accommodations and amusements subject only to the conditions and limitations established by law and applicable alike to all citizens".

60 Q Mr. Chavis, in your 20 years in Marion County have you known that particular Civil Rights Act passed in 1885 to have any particular effect from the standpoint of being enforced or in any way in effect?

MR. JOHNSON: We will object to that on the ground it is not material to the case.

MR. MANAHAN: It is not material to the case against the Attorney General, it is material to the intervenors case who have alleged that the Ghetto Area was indeed well represented in the last General Assembly under multi-member districting because it had an equal member who enacted a Civil Rights statute, and I would note that counsel was inquiring if that Civil Rights statute were among those being introduced. I would propose to introduce it later on for that purpose.

THE COURT: The witness may answer the question. Answer the question as proposed to his personal knowledge.

A My personal—to my personal knowledge, I have seen no effect of that statute.

61 Q Did you ever run for office before you run for the State Senate?

A It's according to what you call a political office.

[88, 89]

62 Q Other than party office.

A No.

63 Q When you ran in the primary, were you slated or unslated candidate?

A I was a slated candidate.

64 Q How did you become—

THE COURT: What do you mean by "slated candidate"?

THE WITNESS: Candidate endorsed by the party organization.

65 Q How did you become a slated candidate?

A I went to a friend of mine who was prominent in Democratic party politics in Indianapolis.

66 Q Who?

A Mr. William Warren, W-a-r-r-e-n.

67 Q As a result of meeting with him, what did you next do to become a slated candidate?

A He gave me a list of 30 prominent people in the Democratic party more or less, and I went around to each one of them and asked if it would be all right for me to run for State Senator, and they told me that I had their blessings.

68 Q What was the race of these 30 people?

A Those were white people.

69 Q When were you slated, did you then become nominated?

A I did.

[89, 90]

70 Q Was anyone else who was slated at the party convention not nominated at the party primary?

A I recall no one on the State Senate slate was not nominated in the primary.

71 Q What individual campaigning did you do for the General Assembly after your nomination?

A Well, I went wherever the party had a meeting and talked. I went to Churches and lodges, as I had been doing for 20 years and talked, shook as many hands as I could and rode with the party ticket.

72 Q Did you have any separate advertising in the papers apart from any of the other candidates?

A Many of the newspapers—I think, if I recall, some friends of mine might have bought an ad in one of the Negro papers.

73 Q Did you have any separate campaign funds from them?

A I set up a campaign committee and bought some stationery, wrote letters to precinct committeemen with it, bought some cards and went to precinct committee meetings.

74 Q Did you have any separate campaign funds used to bring yourself before the general public?

A No.

75 Q Did you have any individual interviews by mass meeting which were published individually?

A If I recall, I answered a question here or two but prior to my election to State Senate, I don't recall any newspaper personal interviews.

76 Q Did you campaign throughout the county?

A I campaigned primarily in what is considered the Ghetto Area and where they were friendly precinct committeemen and ward chairmen in other areas, I went down there, too.

77 Q How much time did you have between your election as a freshman legislator and convening of the General Assembly?

A We were elected in November and General Assembly convened in January next year.

78 Q How long does General Assembly session last?

A 60 days.

79 Q During the time, between the time of your election and the time of the convening of the General Assembly, what opportunities did you have to make contact with other elected legislators?

A We had a General Legislator's meeting some time, I believe early in the month of December and that was the only opportunity.

80 Q Did you have any individual contacts with legislators from outside Marion County?

A I had none.

81 Q What committee assignments did you obtain?

A I served on the Labor Committee, I served on the Transportation Committee, I served on the Elections committee, I served in one session on courts, organization of courts in criminal law, I served as—on judiciary aid in another session, one session.

82 Q Did you make use of your county party organization in expressing your desires as what com-

[91, 92]

mittees you would serve on or did you express them directly to the State Legislative leaders?

A As a practical matter in the Indiana General Assembly, you list anybody's support, whether it be Executive Secretary of Indiana State Teachers Association, President AFL-CIO, your county chairman, the appointing officer and the caucus chairman, whoever you can get to put a word in for you to get on a committee.

83 Q During session of the General Assembly, did you have occasion to consult with the people in your county party organization?

A I made it a practice to consult almost daily with the leadership of the county organization.

84 Q Who did you consult with?

A County chairman, immediate past county chairman, county treasurer, whoever else within a hierarchy I thought necessary to talk to.

85 Q And in these conversations, did the county party committee state its position on various statutes?

A It stated its position.

86 Q Did you follow that position in your vote?

A I was wise enough to do that in order to be renominated.

87 Q Did you break the ranks same time during that session?

A I don't remember breaking the ranks on any issue. I might say this: There are very few issues that are real party issues, but on party issues I was a straight line on matters like abolishing capital punishment. I didn't ask party leadership about that or the Apportionment Act. They were matters of human conscience.

88 Q Did the matter of metropolitan thoroughfare come up in Marion County relating to inner-city commerce during your first session as a legislator?

A I don't recall if it was in the first session, it was the second session. I do recall it very vividly.

89 Q Would it have been the special session?

A The second session is the one I recall working on revision of the bills, or metropolitan thoroughfare.

90 Q Did you have any split with your party on that issue?

A No, I, along with Senator Pettigrew represented our party's interest and Mr. Retterer and one other gentleman in the House represented the opposing party's interest and we got the bill together in a conference committee, if I remember, some kind of a committee, and gave as much as we could give and they gave as much as they could give and the bill was more or less bipartisan effort when we finished with it.

91 Q During your tenure as a General Assemblyman, can you cite any particular service you were able to perform for the Ghetto Area in Indianapolis?

A Mr. Manahan, I may have to be a little lengthy, but I want to explain to you the role in my judgment, of a Negro politican at least the way I conceive it. I could not be so radical that I would incur the dislikes of the white community and make it possible for me to be re-elected, re-nominated and re-elected, nor could I be so non-militant that I would have Negroes distrust me because I was only useful to my people and to the whole system if I could carry oil and water on both shoulders, so a liberal politician has to walk a very narrow fence in Marion County. He doesn't want to get the people downtown to emulate at him and on the other hand he must get along with the black people in his community or he won't be useful to the people downtown. I did what I could for my people within the limitations that I had as a man elected in the manner in which I was elected.

THE COURT: Mr. Chavis, why is that different from a white politician?

THE WITNESS: I don't know; I've never been white.

92 Q Would a representative district, if you were in a representative district within the Ghetto Area as opposed to an outlarged district, would that have altered the approach you would have taken to legislation and party solidarity during your tenure as a Senator?

A Absolutely.

MR. JOHNSON: I'm going to object to that question, it invades the province of the Court as to whether it would have affected the position he took in relation to party solidarity during his tenure as a Senator.

THE COURT: The Court believes the question is proper. The objection is overruled.

A I would have been different.

[94, 95]

93 Q In what respect and please be brief.

A I would have been much more insistent on the passing of social welfare legislation. I would have driven a harder bargains in the legislature processes because I would have been in a position to come back another four years and remember my enemies and that's basically the way the legislature works.

94 Q Is respective—is prospective long tenure of value from the standpoint of effectiveness to a member of the Indiana General Assembly?

A It certainly is.

95 Q On the committees you served as a General Assemblyman, did you take an interest in any of the legislation work done by defeated legislators from the last session that was still before such committees?

A Very little, if any.

96 Q And after you were defeated, did you follow up any legislation upon which you had worked as committeeman?

A Only the legislation on new code we lawyers had been trying to get in Indiana, civil code study commission legislation.

97 Q Did you follow the last proceeding of the General Assembly.

A As much as I had time to, Mr. Monahan.

98 Q Were you in the State House?

A I was in the State House during a session at least three times a week.

[95, 96]

99 Q Do you know to what extent, if any, this present lawsuit was brought, the intention of the jest during the General Assembly?

A I personally brought it to many of their attention and I personally asked you to deliver copies of each complaint to every one of them because I wanted to impress upon them the fact it wasn't the joke they thought it was.

100 Q Were copies of the complaint and first legal memoranda supplied to each General Assemblyman?

A My understanding there was.

101 Q Did the General Assembly respond in any way in relation to Negro bloc voting interests?

A I would say that the passage of a proposed constitutional amendment, insofar as State Senate, is in the mill, but it's a long, long way off and that's about all the response we got.

102 Q Apart from the bills relating to the apportionment of the State Legislature, did they enact bills relating to Negro bloc voting interests?

A I think so.

103 Q I hand you what is marked Exhibits 20 and 24 and ask you if you know what that legislation does or was meant to do.

A Yes, I do.

104 Q What is that?

A That's House Bill 1760.

105 Q What does it do?

A It makes it impossible for the residents of Lake

County to organize an all-white town and this enacts certain portions of Gary, Indiana.

106 Q What is his race?

A He's a black man.

107 Q I will hand you Exhibits 18 and 24 and ask you what that is and if you know what that bill is to do.

A This is the—these are the amendments to the election code.

108 Q Are there any particular amendments that relate to Negro bloc voting rights or interests?

A There are.

109 Q What?

A It makes it possible for the precinct boards to be in a large major white people from outside the particular precinct and it gives the watcher strong powers to challenge votes and to arrest people and what have you.

110 Q Why would this have particular interest to Negro bloc voters?

A Because over the past three elections it has been the practice, so I suppose the persons in the State Legislature decided to legitimitize.

111 Q Don't suppose.

A They legitimitized it at this time.

112 Q I will hand you Exhibit marked 19 and 24 and ask you what that is and what it does.

A This is House Enrolled Bill 1529 which provides for a multi-member County Council District.

[98, 99]

113 Q In what county?

A Marion County, Indiana.

114 Q Does the County Council still exist; is it to have another election?

A It depends upon what happens in the Unigov case.

115 Q I hand you Exhibit 22 and 24 and ask you what that does.

A This is the Unigov bill.

116 Q What relationship does it have, if any, to Negro voting—bloc voting interests?

A It extends these city limits to some extent to the county line, it provides for the election of a mayor by all of the citizens of the county and yet maintains three all white enclaves, notably Speedway.

MR. JOHNSON: We object to enclave as not being descriptive, and we object to the question.

THE COURT: Mr. Johnson, you may cross-examine if you need further . . .

A Lawrence, Beech Grove, and Speedway, who will still elect their own mayors and City Councils and will yet participate in the election of the so-called super mayor. It changes no taxing districts whatsoever, there were approximately 66 taxing units in Marion County before the bill and there still are. It does nothing whatsoever to the power of any county official, with the exception of the county commissioners. The—all of the other county officers still have their same powers. All of the township officers still have their same powers and a general affect in my judgment is to dilute both the thrust and power of the black vote in the City of Indianapolis.

117 Q I show you Exhibit 67 and ask you what that is.

A This is the statutory notice given to the tax payers of Marion County by the auditor showing the taxable rates for the year beginning January 1st, 1969.

118 Q Are any of these taxing districts or authorities or the amount of tax paid in any of the designated districts changed by Senate Bill 543?

A No.

MR. MANAHAN: We offer in evidence exhibit 67.

THE COURT: It will be received.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. JOHNSON

119 Q Mr. Chavis, do I understand your testimony to be you were a member of the Senate in 1965?

A Yes, sir.

120 Q That was the year the so-called "Reapportionment Act" was passed?

A Yes, sir.

121 Q May I ask how you voted on that particular act?

A I voted for it. I figured a bird in the hand was better than two in the bush.

122 Q Now you are a plaintiff in this cause of action?

A That's right.

123 Q You realize as the attorney has a right to change his mind—I realize—let me ask you another question.

A You want me to answer that?

124 Q I haven't asked you. Do the people in the so-called Ghetto Voting Area have interests common to the people, the district as a whole?

A Certainly, I think they share some common interests.

125 Q Do they share common interests, say, with Negro people outside the Ghetto vote, what has been described as the Ghetto Vote area?

A I might say this to you: I don't think you can differentiate between the interests of any black man in Marion County, wherever he lives. I think it's just more magnified in the case of those who live in the Ghetto, who live in what has been described in this lawsuit as Ghetto Area.

126 Q But nevertheless, the answer is: They have the same interests?

A I think there are similar interests in our society, Mr. Johnson, between all groups, some similar interests.

127 Q Before I forget it, you talked about speaking to 30 prominent people. Are those prominent people prominent in your political organization?

A Some were, some were then and aren't now. You know how politics is. I talked to Barry Martin then, for example, I wouldn't talk to him today.

[101, 102]

128 Q At that time were the people prominent in political organization?

A They were mainly prominent in my organization, yes.

129 Q Isn't that the way the political game is played?

A In Marion County, certainly, it's the way, I am hopeful.

130 Q Are the 30 people white or Negro?

A They were white people. I talked to the Negroes after I got the go-ahead downtown, Mr. Johnson.

131 Q Did other white people also talk to these 30 prominent white people?

A I have no knowledge of what any other candidate did, I was trying to get myself nominated and elected.

132 Q One further question if I may, Mr. Chavis. Your description of "super mayor" and "enclave", are those your own terms?

A Yes, I have a Bachelor's Degree and those are my terms. I may have borrowed some from time to time. That's the way I really feel about them, Mr. Johnson.

133 Q Do I understand your testimony to be on direct that at times you voted intentionally or otherwise, to discriminate against the Negro community?

A That was not my testimony, Mr. Johnson. My testimony was that I did whatever I could do, under the system as it existed; I would have liked to have had better legislation enacted so far as the welfare of the Negro community was concerned. I knew it couldn't be passed, or if it got passed, it would be vetoed by the Governor, as much of it was anyway, so we got what we could.

134 Q Does that explain your vote on the '65 apportionment act?

A I don't have any desire to explain my vote; I voted because I thought it was the best possible thing that could be gotten, but a long, long way away from the ideal. The ideal was always in my mind single-member district in both House and Senate.

135 Q Didn't you just describe in your testimony on direct as a matter of your "conscience"?

A Yes.

MR. JOHNSON: Nothing further.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

136 Q Was the proposition of getting nominated also a factor in determining the position you took on legislative interest?

A It certainly was, and our delegation would have gotten single-member districts in '65, but we couldn't get the support from people in the rest of the State. We did the best we could by getting some more State Senators from Marion County.

MR. MANAHAN: No further questions.

THE COURT: Mr. Chavis, I have a couple of questions in order the record may be clarified. The term Ghetto, I know, is rather commonly used word, but for the purpose of the record, will you define the Ghetto, please.

THE WITNESS: A Ghetto, for the purposes of this record, in my judgment is any area of which either the forces of law or social customs compel one group to live in large percentage to the exclusion of other people of other races.

THE COURT: Would economic factors—

THE WITNESS (Interposing): Economic factors have a large influence, as does the social attitude of the community in which this Ghetto exists.

THE COURT: You, in the beginning of your testimony, stated that you practiced law and your addresses were given and you referred to the fact they were in the Ghetto. Could you geographically designate the Ghetto Area as the like of your definition for the purpose of the record?

THE WITNESS: Your Honor, would you please—

THE COURT: Could you geographically designate those areas that you consider Ghetto in the light of your definition for the purpose of the record?

THE WITNESS: Yes, I could state it for the purpose of the record. It's a very large percentage of Center Township. I don't remember the exact geographical description given in the complaint, but at the time I read it, I agreed with those geographical descriptions.

THE COURT: And you would accept the designation of the geographical designation of the complaint as all inclusive of the Ghetto, but not perhaps inclusive of the entire Ghetto?

THE WITNESS: That's right. In other words, I happen to live in the Ghetto, although it's a suburban Ghetto. There isn't a white family in five blocks of me where I moved then, but social custom they have moved.

MR. JOHNSON: May I have leave of the Court to ask one further question?

THE COURT: Yes.

137 Q (By Mr. Johnson) Would you describe all of Center Township of Marion County as being within the Ghetto Area?

A At the time, Mr. Johnson, that I read the complaint, I thought the description within the complaint was a good one, and I don't recall now whether it included all of Center Township, but it certainly included most of it.

138 Q Then are you saying you don't know just exactly the boundaries of the Ghetto Area?

A I am saying, Mr. Johnson, I rely upon the boundaries set out in the complaint; that is what I am saying.

MR. JOHNSON: Nothing further.

(Witness excused)

JUDSON HAGGERTY, a witness called by plaintiffs having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name, please.

A Judson Haggerty.

2 Q Spell the last name for the Court reporter.

A H-a-g-g-e-r-t-y.

3 Q What is your occupation?

A I am a lawyer.

4 Q How long have you been a lawyer?

A Since 1951.

5 Q You reside in Marion County?

A Yes.

6 Q How long have you resided in Marion County?

A 44 years.

7 Q Have you ever run for office in Marion County?

A Yes.

8 Q When was the first such occasion?

A 1948 I ran for the General Assembly, specifically the House of Representatives.

9 Q Were you a slated candidate?

A Yes.

10 Q In the primary?

A Yes.

11 Q How did you become a slated candidate?

A I had been active for two or three years in the Democratic party, since my return from military service, I had been particularly active in the mayor's race of 1947 and the mayor was elected, democratic mayor, and I went to see him, and that is mostly how I was slated. He called the County Chairman and I was slated for the primary election.

12 Q Had you, prior to that in any way, been able to make yourself known to the voting public of Marion County as a whole?

A No one knew me to any great extent.

13 Q Were you successful at the primary?

A Yes.

14 Q Was anyone on the slate unsuccessful?

A Not that I recall.

15 Q After your election in the fall and during the session of the General Assembly, did you have occasion to speak with any members of the county party organization while it was in session?

A Yes.

16 Q How frequently did you do this?

A I would say at least once a week, whenever any matter directly affecting the party came up for any sort of legislative hearing.

17 Q And did you ever deviate from the recommendations made, if any, by the county chairman and county party organization?

A Not on party matters.

[108, 109]

18 Q Were you re-elected after your first term?

A No.

19 Q Were you re-nominated after your first term?

A No.

20 Q Were you re-slated after your first term?

A No.

21 Q Did you subsequently have occasion to become Marion County chairman?

A Yes.

22 Q Did you subsequently have occasion to participate in deciding upon a slate for the General Assemblymen?

A Yes.

23 Q To what extent were you able to control who were slated for the primary?

A It's traditional, at least for the past 15 years or so, to have a democratic slating convention at which time the elected officials, the precinct committeeman and the vice-committeeman vote a secret ballot on who they think the candidates ought to be to represent the party in the fall. To a very great extent, they pay respectful consideration to the recommendations of the party leaders. That is, their county chairman, the other county officials and their ward chairman, who in turn are appointed by the county chairman.

24 Q And how many of the 15 persons who had your personal support were slated by the slating convention?

A I believe at least 12.

25 Q That would be House of Representatives. How about the Senate?

A In the Senate, I believe five.

26 Q Of the eight?

A Five of the eight.

27 Q Those were slated at the convention—how many senators were there in '64?

A I believe there were six.

28 Q And you met five out of six?

A I think so.

29 Q Of those slated at the party organization did any fail to be nominated at the party primary?

A No.

30 Q You recall over the years anyone being slated by a party convention organization where there is no convention and failing to be nominated in a primary to the General Assembly House of Representatives delegation from Marion County?

A No, I don't.

31 Q During the 1965 General Assembly, were you still county chairman?

A No, I was not.

32 Q Were you participating with the county chairman?

A Yes.

33 Q In going to matters before the legislature?

A Yes.

34 Q How often did the county chairman or you contact the legislators on the General Assembly delegation during that General Assembly?

MR. FRANDSEN: I would object to that question, I don't believe it would be within Mr. Haggerty's personal knowledge how many times the county chairman approached the party leaders.

MR. MANAHAN: Withdraw the question.

35 Q How many times did you do so?

A I would say at least twice a week on the average, and I talked to almost all of the legislators.

36 Q And were these talks relating to the position of the county party organization of various statutes?

A Yes.

37 Q Were there any deviations or renegade acts from the county party organization standpoint during the 1965 General Assembly?

A If there were any, there were very few and on matters that were not regarded as being of really great significance.

38 Q Have you had occasion to participate in State conventions?

A Yes.

39 Q And over how many years have you participated either as a delegate or personally present at the State conventions?

A Since about 1946.

40 Q Are you able to form an opinion as to whether being a resident of Marion County can affect your

liklihood of a candidate becoming nominated or elected to a State-wide office?

A Yes.

41 Q Is it a known factor—is it a known factor to consider candidates for State-wide office that candidates of Marion County has advantage or disadvantage?

A It's known to be a disadvantage.

42 Q And is it considered a disadvantage as far as obtaining votes State-wide, apart from delegate votes at the convention, votes at a general election?

A Yes.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

43 Q I wonder if you can briefly describe to the Court the type of political maneuvering or imaginations that might be defined that go on behind the scenes prior to a slating convention.

A I don't think I could do it briefly.

44 Q Let me rephrase that question. Would it be fair to say that political matters of interest to the people in Marion County are of significant concern when the people are determining who shall represent them in the primary, or prior to the slating convention?

A I think they are some concerned, yes.

45 Q Is it a fair assumption that these people who are selected by either party are representatives of the community concerned for these issues?

A I think that depends to a great extent on the leadership of the party.

46 Q Well, Mr. Haggerty, how is the—let me ask you this: Who determines the political structure or the structure of a political organization within the county?

A The legislature.

47 Q The legislature determines that there shall be a precinct committeeman and vice-precinct committeeman at the particular political primaries?

A There are statutes on all that, yes.

48 Q Who elects the county chairman, Mr. Haggerty?

A Precinct committeemen and vice-committeemen.

49 Q Is there an absolute correlation between the response by your party's representative, the General Assembly on matters of political significance, a correlation between their votes on a specific issue that has been determined to be a political party issue, is there an absolute correlation?

A Not absolute, but I think everyone's hopeful that people will perform on their campaign promises.

50 Q Who determines what the planks of the democratic members of the General Assembly will take, the position of the General Assembly?

A Of course, there is a State platform that is adopted at the State convention, which gives some guidance on that subject. Once in a while a local organization will also have a platform, it's not too frequent.

51 Q Would you say that it is a nature, at least that all views by necessity cannot be aired or positions

taken either at the primary, democratic primary, or in the actual convention or in the General Assembly?

A I am sure that's true and even if all views were expressed, it wouldn't all be heard because one of the problems is the ballot is so long and the vote therefore is so confusing, that under the present system that obtains in this county, the average voter knows neither the identity nor the position of the candidates he elects to the General Assembly.

MR. FRANDSEN: I have no further questions.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

52 Q Your recollection, has any Negro ever been nominated to the General Assembly ever been slated at a county party organization convention who was opposed by the county chairman, a Negro, now.

A No.

53 Q To your knowledge, has a Negro ever been nominated at a party primary who was not slated?

A No.

54 Q On your experience—based on your experience, do you have an opinion as to whether single-member districting would have a significant affect on the control of a county party chairman over the General Assembly delegation for Marion County, Indiana?

A I believe it would.

MR. FRANDSEN: The defense would object to that, Your Honor, on the basis this is a matter that is not within the particular expertise or knowledge of the witness.

MR. MANAHAN: He is a former General Assemblyman.

THE COURT: It was his opinion, as I understood the matter, which—to which the question was asked, merely based on his opinion.

MR. FRANDSEN: I will withdraw the objection.

A I believe it would have basic significant affect.

55 Q What would the effect be?

A The effect would be that, in my opinion, the dwellers of the Ghetto would have a voice in the General Assembly to which they are denied under the present system.

56 Q And would it have a similar beneficial effect to other parts of the community who may engage in bloc voting for purposes of, say, contrary, to the interest of the Ghetto; would it give them a voice as well?

A I believe it would.

MR. MANAHAN: No further questions.

RE-CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

57 Q Based on the political experience of Mr. Haggerty, I wish to direct this question as to whether persons who are not identified geographically with the Ghetto Area, so-called Ghetto Area, are in

your opinion, incapable of responding to matters of concern of substantive gain for these people?

A Not incapable, but I suspect they don't feel quite the urgency.

MR. FRANDSEN: I have no further questions.

MR. MANAHAN: No further questions.

(Witness excused)

(Court recessed at 3:30 P.M., reconvened at 3:55 P.M. and the following proceedings were had:)

GEORGE MORRIS, a witness called by Plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

1 Q State your name, please.

A G. E. Morris.

2 Q Your occupation?

A Deputy Clerk, Marion County Clerk's office.

3 Q How long have you been so occupied?

A Six years.

4 Q Are you a custodian of the records in that office?

A I am.

5 Q Do the records of that office, do they include audits in the normal course of vote in Marion County for 1968 primary and general election for ward and precinct?

A They do.

6 Q Do you have those with you?

A I do.

7 Q I will show you premarked Exhibits 33, 30, and 32, ask you first what is Exhibit 33?

JUDGE STECKLER: Would you state those Exhibit numbers again, Mr. Manahan?

MR. MANAHAN: Exhibit 33, consisting of one book, Exhibit 32 consisting of two separate books marked with the same number.

8 Q What is Exhibit 32?

A It's the canvass sheet and recapitulation of the election of 1968.

9 Q I show you these books marked 33, what was this made from?

A Made from the same book.

10 Q And what does it contain?

A It contains figures of the President, the State Representatives and the Senate.

11 Q From Marion County in the general election of 1968?

A Right.

12 Q And Exhibit—the books consisting of Exhibit 32, what do they contain?

A That is the primary of 1968.

13 Q For each political party?

A Right.

[118, 119]

14 Q And are the xeroxed copies therein also marked with the same exhibit number containing the party primaries for those offices?

A Right.

MR. MANAHAN: We offer the said exhibits, xeroxes, in evidence.

MR. JOHNSON: No objection.

MR. MANAHAN: I have no further questions.

(Witness excused)

CLIFFORD DEWITT, a witness called by the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

1 Q State your name, please.

A Clifford M. DeWitt.

2 Q What is your occupation?

A I am an attorney at law.

3 Q How long have you been an attorney?

A Since March of 1965.

4 Q Are you a resident of Marion County?

A Yes, I am.

5 Q How long have you resided in Marion County?

A 31 years.

6 Q Have you ever had occasion to run for the General Assembly?

A Yes, I have.

7 Q What year was that?

A I ran in 1964 and 1966.

8 Q Were you a slated candidate in the primary?

A I was.

9 Q How did you become slated?

A At the—prior to the slating convention, I contacted Judson Haggerty and asked him what the chances were of my becoming a candidate for the General Assembly. Judson Haggerty, then being Democrat county chairman.

10 Q Did he approve?

A Yes, he at that time indicated that he would offer me the support of the County Committee, basically, I believe, because of the contributions that I had made to the party to that date.

11 Q At the slating convention, were certain documents used to show the County Chairman's recommendations as to who should be slated at that convention?

A Yes, there were.

12 Q Do you have such a document with you?

A I do not have it for that slating convention.

13 Q For what slating convention is it?

A I have the county recommendations which were offered at the 1968 slating convention.

14 Q Were you present at that convention?

A Yes, I was there as a voter in the convention, but not as a candidate at that time.

15 Q Was a similar document used at the convention which you were both a voter and—

A They are quite similar, yes. The handwriting on that is my own.

16 Q And you have two other documents relating to what?

A I brought with me the 1966 slating convention and official copy of the tally as it was cast by the precinct committeemen and vice-committeemen who voted there and the names of the various candidates that were on the machines at the slating convention, and then the totals that were compiled by each candidate.

17 Q And the third document?

A The third document is the slate which was arrived at based upon the figures there on that former sheet, and they are the—and the official slate which was passed out at the 1966 primary.

18 Q This is to the voting public?

A Yes, that is what is passed out by the precinct committeeman.

19 Q When serving in the General Assembly, did you have occasion to consult with your county chairman?

A I did.

20 Q How frequently?

A At the outset, probably every other day.

21 Q And did it become more or less frequent?

A It became more frequent as the session drew toward a close. We had a lot of legislative back-log we discuss.

[121, 122]

22 Q What time of day did this consultation take place?

A To the best of my memory, we met early in the morning on most of the days that the session was in session.

23 Q Were the other House members present?

A I would say the majority of them were there, yes.

24 Q Were bills proposed by the county organization or chairman at these meetings?

A Yes, bills were discussed that had been either introduced or at the outset of the session it would be supported by the organization that were to be introduced.

25 Q Was the position of the organization with respect to these bills made clear at these morning sessions?

A Yes.

26 Q Did you follow the recommendation of the organization?

A On the bills that were under discussion at these meetings, yes.

27 Q Did you sponsor legislation during that session?

A Yes, I did.

28 Q Did you ever have occasion to sponsor legislation based clearly on the recommendation of the party organization?

A Yes.

29 Q Did you have occasion to sponsor such legislation which you found later to be contrary to the actual

interest of a sectional interest in Marion County, which you wished to serve?

A Yes.

30 Q Would you describe that, please?

A I was asked to co-sponsor a bill which, in the general reading of the bill, applied to zoning ordinances of Marion County and I co-sponsored this bill, having only read it very generally, based mostly on the recommendation of the county committee, only to find that the bill, in some areas, provided for the elimination of certan local zoning boards in our local communities here, such as Beech Grove and Speedway and a few of the other smaller cities and at that time the office, my law office were city attorneys for the City of Beech Grove and we had certain interests that were, we felt, in the best interest of the local communities. Speedway, Beech Grove and the rest of them and of course I found the bill that was recommended to me by the County Committee, and one upon which I was co-sponsor was adverse to those interests, therefore I was placed in the position of having to argue against the bill which I was co-sponsor of and had to subsequently withdraw my name from it.

31 Q Did the County organization put that bill through?

A Yes, they did.

32 Q Without your vote, however?

A Yes.

33 Q I show you Exhibit 68 and ask you if that is the first document referred to in the previous testimony.

A Yes.

34 Q This is a copy of a so-called basement slate or its recommendation made to the slating convention by the county chairman, the county organization which is handed to the Precinct Committeeman as they come through the doors.

35 Q What happens at a slating convention; is there any parliamentary discussion? Just how does the slating convention operate physically?

A There are a number of voting machines which have on them the same ticket as would appear to the general public at the primary, certain of these names are blocked off, depending on whether or not they have paid their party assessment, those candidates that have paid their party assessment and are in good standing with the party are on the machine and the machine is left open as to those candidates. The committeemen and vice-committeemen come through a hall which usually there are eleven of these machines located, they proceed to the machine which is covered by their ward chairman or someone from the particular ward who would recognize them as a committeeman. Of course, there are also photo credentials prior to the slating convention, and they merely go in and register their recommendations or preference of the candidates that are available to them.

36 Q Is there any meeting of the assembly as a whole at the slating convention; any speeches resembling what we call a convention?

A No, I wouldn't say so.

37 Q I show you Exhibit 69 and ask you what that is, is that the second document referred to in your immediate preceding testimony?

A It is an official copy of the tabulation that was taken at the 1966 slating convention in which my name was submitted as a candidate.

38 Q And Exhibit 70?

A Exhibit 70 is the slate which was passed out by the Democratic precinct committeemen on primary day, 1966, showing that these were the official slated candidates and recommendations of the County Committee. The only thing missing from this is the pair sheet, which pairs the numbers of the various candidates off so that the potential voter can just take this portion in with him if they want to.

MR. MANAHAN: We offer Exhibits 68, 69 and 70.

MR. JOHNSON: Defendant will object to introduction of 68 because it's hearsay, 69 because it's hearsay, 70 because it's hearsay and incomplete.

MR. MANAHAN: We are offering them as documents relating to candidates of General Assembly pre-primary nominations in Indianapolis and Marion County, Indiana.

THE COURT: I understand the witness was there present?

THE WITNESS: Yes.

THE COURT: They will be received.

MR. MANAHAN: I have no further questions of the witness.

CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

39 Q Mr. DeWitt, when you approached Mr. Haggerty expressing your interest in running as a candidate for Democratic representative from Marion County, did you have any political views or strong beliefs or feelings about needed legislation?

A Yes, I did.

40 Q Did you express those views to Mr. Haggerty?

A Yes, we discussed them in general terms.

41 Q Did they correspond or were they compatible with the general plank of that party?

A Well, I would say they were very compatible and coincided with the views of Mr. Haggerty at that time.

42 Q You say your views coincided with those of Mr. Haggerty?

A Most definitely yes.

43 Q As a political maneuver?

A No, not as a political maneuver on my part. We, in fact, did see eye-to-eye on a great many of the issues that he and I both felt were important. That was not a political maneuver on my part.

44 Q You refer, you testified to a certain bill which you co-sponsored and purported to affect certain zoning boards situated within Marion County. This was made known to you after you had co-sponsored the bill?

A Yes.

[127, 128]

45 Q Did the bill represent Marion County interests as a whole?

A It received the support of the majority of the delegation and was eventually enacted into legislation. It is the present law, so to that extent it did.

46 Q It had county-wide application; is this correct?

A It did have county-wide application, yes, sir.

47 Q In other words, your personal views were in disagreement with the purpose of this bill?

A I found that, as I tried to indicate, constituents in certain geographical areas, mainly and most predominate in my own mind Beech Grove, Indiana, were opposed to this legislation, the opposition was expressed by the many elected officials, the mayor, et cetera, and for that reason because I did feel I owed certain allegiances to Beech Grove and some of the other outlying areas I felt I should reconsider that portion of the bill and did subsequently oppose that portion of the bill.

48 Q Are you not testifying that on matters of personal concern to you, you rejected those or supplanted those with the views of the county chairmen or Democratic leaders?

A No, what I think I am trying to testify to is the fact that many times certain pieces of legislation which are granted party backing through the County Committee, they may be adverse to certain geographical areas with which you or myself or any other legislator may feel an allegiance or feel it's important to his constituents, at least this was an experience I had in this particular instance.

[128, 129]

49 Q Mr. DeWitt, as these geographical areas become smaller and smaller, does your allegiance to the party diminish?

A I think your allegiance to the party organization would diminish in terms of getting elected and slated, or what have you, that would be my opinion on that, I have never run in a smaller district.

MR. FRANDSEN: No further questions.

MR. MANAHAN: I have no further questions.

(Witness excused)

ANDREW RAMSEY, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name please.

A Andrew William Ramsey.

2 Q Are you a resident of Marion County?

A I am.

3 Q How long have you been such a resident?

A 50 years.

4 Q Are you a plaintiff in this cause?

A I am.

5 Q What is your race?

A I am a Negro.

6 Q Are you a voter of Marion County?

A I am.

7 Q How long have you been such a voter?

A I don't know, let's see, ever since I was 21.

8 Q Have you ever had occasion to run for the General Assembly of Indiana?

A I have.

9 Q When?

A '66.

10 Q Were you slated?

A I was not.

11 Q Did you again have occasion to run for the General Assembly?

A I did.

12 Q Were you slated?

A Yes.

13 Q Were you nominated?

A Yes.

14 Q Did the votes you received when you were not slated—did the vote you received in the primary when you were not slated differ substantially from the vote you received in the primary when you were slated?

A It was only a small percentage of it.

15 Q Did you, in any part of Marion County, on the occasion that you were not slated run ahead of the slate?

A No, except in my own precinct.

[130, 131]

16 Q And on the second occasion, did you run ahead of the balance of the slate in a certain part of Marion County?

A In my particular locality.

17 Q And did you run well ahead of them?

A I did.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. JOHNSON

18 Q Is this logical to assume you would run better in a precinct where you are known rather than a precinct where you are not known?

A That is true, except if I might further answer that, one of the candidates was a legislator on the Republican ticket was in my same precinct and that person didn't run so well.

19 Q He didn't run so well?

A That person was elected, but he did not carry the votes in his own precinct.

MR. JOHNSON: I have nothing further.

MR. MANAHAN: I have nothing further.

(Witness excused)

MASON BRYANT, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

1 Q State your name, please.

A Mason Bryant.

2 Q Where do you live?

A 740 West 10th Street, Indianapolis, Indiana.

3 Q Is that in Marion County, Indiana?

A That's correct.

4 Q How long have you been a resident of Marion County?

A About 35 years.

5 Q Are you a voter in Marion County?

A I am.

6 Q How long have you been a voter?

A Since I was 21.

7 Q Are you a plaintiff?

A Yes.

8 Q State your race.

A I am black American.

9 Q Have you ever had occasion to run for the Indiana General Assembly?

A I have, I was a candidate in the past election for the Indiana General Assembly House of Representatives.

10 Q Prior to your being nominated, were you slated by the party convention?

A Yes.

11 Q Prior to your being slated by the party convention, were you recommended by the party organization?

A Yes.

12 Q How did you come to become a candidate in this last general election?

A I was called on the last day of filing by a representative of the County Committee asking me if I would consider being a candidate.

MR. MANAHAN: No further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. JOHNSON

13 Q Where do you reside, Mr. Bryant?

A 704 West 10th Street.

14 Q How did you run in the county as a whole?

A During the primary or general election?

15 Q General election.

A I ran along with the ticket, on the Democratic ticket.

16 Q How many were elected of your party at that time?

A For this particular office, none.

17 Q How did you run as compared to number one man on the ticket?

A I came in about fourth out of 15.

MR. JOHNSON: I have nothing further.

MR. MANAHAN: Nothing further.

(Witness excused)

MARILYN HOTZ, a witness called by the plaintiffs, having been first duly sworn testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

1 Q State your name, please.

A Marilyn Hotz, spelled H-o-t-z.

2 Q Where do you live, Miss Hotz?

A 8037 Anemone Lane.

3 Q Is that in or outside of Indianapolis?

A It's outside.

4 Q Is that inside Marion County?

A Yes, sir.

5 Q What is your political preference?

A Republican.

6 Q How long have you been a Republican?

A Since I was, I suppose, ever since I was born. I grew up in a Republican family.

7 Q Do you regularly and have you regularly voted or taken the trouble to vote on precinct committee-

men and vice-committeemen in Republican primary elections?

A Yes, I have.

8 Q Have you voted on General Assembly seats in Republican primary elections?

A Yes, I have.

9 Q In doing so, have you made an individual voters choice, or how did you make your vote?

A I voted the slate.

MR. MANAHAN: No further questions.

MR. FRANDSEN: I'm sorry, would you repeat the last question.

MR. MANAHAN: How she went about choosing—how she voted for the primary.

CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

10 Q Where do you work?

A Unied Christian Missionary Society.

11 Q Repeat that, please.

A United Christian Missionary Society.

12 Q Where is that located?

A 222 South Downey Avenue.

13 Q Where, in relationship to the Circle in Indianapolis, is this?

A It's about 5200 east and 200 south.

14 Q Are you concerned with the Metropolitan problems of the Metropolitan area in which you live?

A What problem are you talking about?

15 Q The general problem of employment, of the well-being of the citizens in Marion County?

A Yes, I guess so.

16 Q Their highways?

A Yes.

17 Q Their schools?

A Yes.

18 Q Are your interests and needs in the locality in which you live substantially different from that which other Marion County residents are confronted with?

A I wouldn't know about the other Marion County people, only myself. I couldn't speak for anyone else, I don't think.

19 Q When you vote in the election, have you identified with any particular candidate, do you feel that some of the Republican candidates are more representative of your interests?

A Yes, I would say so, it—I think you would have to give me a more specific relationship than just a general statement.

20 Q How many representatives do you elect when you go to the polls in general elections?

A We elect 15.

21 Q Do you vote for all 15?

A I vote for the slate that my committeeman gives me.

[137, 138]

22 Q Do you ever express an independent judgment on the quality of some people who may or may not be identified with your political party?

A I have on occasion, yes, when I have known them personally.

MR. FRANDSEN: No further questions.

MR. MANAHAN: No further questions.

(Witness excused)

NOLA ALLEN, a witness called by the plaintiffs, having been first duly sworn,

DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

1 Q State your name, please.

A Nola Allen.

2 Q What is your occupation?

A I am an attorney.

3 Q How long have you been an attorney?

A Almost 15 years.

4 Q Are you affiliated with any political party in Marion County?

A Yes.

5 Q What party is that?

A Republican.

6 Q Do you hold any office in that party?

A Yes.

7 Q What office is that?

A I am precinct committeeman, 23rd Ward, 11th precinct, I am ward coordinator and I am 11th district chairman.

8 Q Did you have occasion to, during the last General Assembly, to be present at the State House during its deliberations?

A Yes.

9 Q Did you appear there in cooperation with the Republican party county organization?

A In all candor, I can't say it was in connection with the Republican party organization. I was the assistant majority attorney in the House.

10 Q Did you have occasion to observe or deliberate with the Marion County delegation to that Assembly?

A Yes.

11 Q Did they meet frequently with the party organization?

A They met with Mr. Bulen, the County Chairman and myself, yes.

12 Q About how frequently would these meetings take place?

A At least once a week.

13 Q Were views on legislation taken into consideration at these meetings?

A Yes.

[140, 141]

14 Q And was there a general unanimity in the vote expressed on subjects which were discussed at these meetings?

A No.

15 Q I mean a vote at the Assembly itself.

A Very, very rarely did a Marion County delegation ever vote 15 man to a vote on anything unless the vote ended up being 80 to nothing.

16 Q Was there among a smaller group than the 15 in unanimity?

A Yes, on most controversial issues, our delegation was split eight to seven, or seven to seven, and one not there. We had a very unusual delegation at this time.

17 Q Have you participated in General Assembly affairs before?

A Yes.

18 Q Would you characterize this delegation as unusual?

A Yes, as compared to large county delegations it is unusual.

19 Q Particularly have you found large all-member delegations to express unanimity on legislation important to their community?

A The Lake County delegation does this rather regularly. This is not true with the Marion County delegation under either party to any great extent.

20 Q Have you had occasion to observe the primary elections of General Assemblymen of Marion County over the past few years?

A Yes.

[141, 142]

21 Q During the last primary election, were there any slated candidates at the time of the voting primary for the voters?

A Yes.

22 Q How were these candidates slated; was there a slating convention or were they chosen by the party organization?

A As I recall, the Democrats had a slating convention, the Republicans did not have a slating convention as such, we used what we call a Candidate Selection Committee.

23 Q And did it select 15 House of Representative candidates?

A Yes, for recommendation.

24 Q Did it select eight Senatorial candidates?

A Six—seven, there were seven this time.

25 Q And of the 15 how many were nominated by the voters?

A 15.

26 Q And of the seven Senators, how many were nominated by the voters?

A Seven.

27 Q In 1966 were the same general facts true?

A 1966, I believe the Republicans, the Republican situation in '66 was a little bit different in that in '66 we had a real primary fight between two factions in the party. There was a regular organization and Republican Action Committee.

28 Q Were either of these factions, were they county-wide?

A There was attempt to make them county-wide.

29 Q Was anyone who was not from either one of these county-wide factions nominated in the '66 primary?

A If I understand your question correctly, no, none of the regular organization candidates won in the primary and all the Republican Action Committee sponsored candidates won in the Republican primary. In the Democrat primary, I think, as I recall there was a split. I don't think there was a clear cut delineation as to wins or losses straight across the ticket.

30 Q Given the last two elections, given the present circumstances in your political party, do you believe the party organization presently can, given no forseeable changes, affect substantial control over who gets the party nomination for General Assembly seats in Marion County?

A Can the party organization do this?

31 Q Effectively do it?

A Yes, if you define control as being a result of real hard ward and precinct work and this is really what it is, it's a result of real hard ward and precinct work.

32 Q This is a county-wide effort and not a factual one, would that be correct?

A We tried to make it such but we had some organization people that always vote the regular line ticket and you find precincts that really don't

[143, 144]

carry the whole ticket as you would like for them to do.

33 Q Yes, but do you think these votes could preclude the party organization from having in fact a factious control over who gets nominated to the General Assembly seats?

A Yes, because the Republican Action Committee did just this.

34 Q On a total county-wide basis?

A Right.

35 Q Do you know of any factional group which can conceivably do this, given the present circumstances in your party?

A Yes.

36 Q Who?

A The outside precincts can control our primary. When I'm talking about the precincts and wards, out in the suburbs can control our primary.

37 Q Was it predominate outside precinct vote that caused the last upheaval?

A It was a result of a great deal of strength there and the fact there was a crew and a great deal of work done in the inner-city.

38 Q The inner-city vote was quite important in overcoming the regular organization, this party reorganization in 1966?

A Very definitely.

MR.MANAHAN: I have no further questions.

[144, 145]

CROSS EXAMINATION,

QUESTIONS BY MR. JOHNSON

39 Q In your experience, Mrs. Allen, aren't tickets put together by party organization to appeal the various interest groups throughout Marion County?

A Yes.

40 Q Among these interest groups, are economic groups, racial groups and others?

A Yes.

41 Q Now, in your capacity as a voter and in no other capacity, can you answer the question, as a voter do you vote for a slate which has been put together of these various groups in reliance on this principle applied by your county organization?

MR. JOHNSON: Withdraw the question, perhaps I can simplify it.

42 Q Do you vote a slate, as a voter, do you vote a slate because it does consist of representatives from various interest groups throughout the county?

A Yes, and that's one of the considerations in putting the slate together. It's difficult for me to differentiate between my voter capacity and what I do as a party person, because I have probably been a little bit more involved in putting the slate ticket together than any other voter. I can't say I always won, but I did have a lot more say about it than many other people would.

MR. JOHNSON: I have no further questions.

[145, 146]

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

43 Q I show you exhibit 5B that is in evidence, showing the location of the elected Republican representatives' homes at the time they filed in the party primary, does it to you somehow reflect an interest in making an appeal to each conceivable faction in the family, in the county area, each geographical interest?

A Yes, it does, if I can explain.

44 Q Yes, you may.

A Back in 1966, as I stated, we had a real primary fight and at the time we selected our candidates in the primary. Republican Action Committee was not real, real strong in some geographical areas, and we felt that necessary to come up with a 15 man slate, many of the people who lived in Center Township including myself did not feel ready to run for public office and therefore there was a hiatus in Center Township residents. However, many of the Washington Township residents, I believe at least two Washington Township residents had a number of family and historical ties in this Center Township Area, even though they did not live there and to the best of the Committee's ability they tried to achieve racial, geographical, economical and social diversity on the ticket. I can't say they were entirely successful, but they made a real good attempt and this is a result of their attempts.

45 Q And the real hard driving effort to put the Action Committees through did take place by the residents of Center Township; did it not?

A It was an over-all drive. Center Township, having the population it has, could not be ignored.

46 Q And I call your attention to what is now in evidence as the place of residence of the present representatives from Marion County in the General Assembly of Indiana and ask you the same question I asked with regard to Exhibit 5B and now I have Exhibit 5A how . . .

A (Interposing) In the question, does that represent . . .

47 Q (Continuing) How does that reflect these efforts to represent each group in Marion County, political and geographical and from a social interest standpoint?

A We have, in our delegation, a representative from each of the nine townships, except Franklin Township. Franklin Township on its own decided it did not want to run a candidate for the legislature—the way those lines are drawn it could be confusing—the gentlemen, some of those gentlemen in the corner on the right hand side of the map to the east in effect live in Lawrence Township so they represented the east side; there were two representatives from Center Township, as you can see, one representative and I believe two senators from Perry Township; one from Decatur; I believe either three or four from Washington Township; I can't really think of the others but I do recall very definitely there was representation from every township except Franklin and that was as Franklin's own desire.

48 Q Has Franklin Township during this past decade, to your knowledge, ever had a representative who

was nominated and/or elected to the Indiana General Assembly?

A I do not know.

49 Q Have you taken at the last session or in your party organization, have you taken a position with respect to single-member districting?

A Yes.

50 Q Was it favorable or unfavorable?

A I was asked to take a position in connection with Unigov and it was favorable for Unigov council.

51 Q With respect to the legislature?

A I was not asked to take a position.

MR. MANAHAN: I have no other questions.

CROSS EXAMINATION,

QUESTIONS BY MR. JOHNSON

52 Q Mrs. Allen, are tickets also made up with consideration to the offices involved, I am talking not only of legislative offices, but also office of prosecutor, county prosecutor, or whatever else may be?

A Yes, all of these things are taken into consideration, but we do make a very special effort in our party to have representation from each of the nine townships as much as possible.

MR. JOHNSON: Nothing further.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

53 Q Why are the townships considered significant geographical?

A They have been historic for many ages as political power. Many of the township officers are constitutional officers. JP for one, these have been the traditional geographic and political boundaries people have looked at.

54 Q In your opinion, do they have any value of social boundaries to determine different parts of Marion County from a social and economic standpoint?

A As long as they are as significant a political and governmental boundary, there will be some social and economic cohesion of interest.

55 Q You state there is significant governmental boundary. What does—what power resides at the township level?

A There is a township trustee which administers poor relief, when you are outside the city limits of the City of Indianapolis, per se, they also administer the school system. There is the township assessor, there are the township boards as such, there are many governmental services, especially taxing districts that rely on township boundaries in order to determine what the rate would be. To a lessor extent, really, they now—to a very much lessor extent, they have some say or control over what happens to the roads or which ones are to be improved or unimproved. As we become more and more urban and more and more have Metropolitan

Government, their significance is lessening, but it's far from complete.

MR. MANAHAN: No further questions.

MR. JOHNSON: Nothing further.

(Witness excused)

ROWLAND ALLEN, a witness called by plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name, please, and spell it for the court reporter.

A Rowland Allen, R-o-w-l-a-n-d Allen.

2 Q Where do you live, Mr. Allen?

A 5415 Central, Indianapolis.

3 Q Are you a plaintiff in this cause?

A I am.

4 Q Are you a voter in Marion County, Indiana?

A I am.

5 Q How long have you been a voter?

A Since 1925.

6 Q Have you affiliated with any political party?

A No.

7 Q Are you a political independent then?

A I am.

[151, 152]

8 Q Have you regularly voted in Marion County?

A Always.

9 Q Have you made special efforts to ascertain how candidates stand on the issues in Marion County elections?

A Yes.

10 Q To the point of taking notes and positions they have taken?

A Yes.

11 Q I will show you Exhibit 9 in evidence, which has been presented as portrayal of the General Assembly ballot in Marion County, Indiana during recent elections, I will ask you if the length of that ballot as relates to General Assemblymen, has any significant effect in your opinion, on your personal ability to cast a vote, based upon the individual merit of candidates and the issues that they have presented in their campaigns?

A I might say I am increasingly bewildered by the number of candidates.

12 Q Has the number of candidates had affect on your vote you can note?

A It's hard to know what they stand for and identify them.

13 Q Do you look to the news media for information regarding individual candidates?

A Both that and League of Woman Voters, when they put their very helpful paper out.

14 Q Since 1925 have you been able at any time from news media or League of Women Voters to ascer-

tain anything of value with respect to General Assembly candidates in Marion County?

A In some years, I suppose the only way to answer that, do I feel I have had good luck in getting the man I liked in?

15 Q Have you had an opinion when you voted as to each individual who is running for the office or only for some?

A For some.

16 Q Have you ever had a year which you could form an opinion as to all the candidates?

A No, I haven't done that much homework.

17 Q Have you ever found sources available by which you could accomplish that kind of opinion?

A No.

MR. MANAHAN: No further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

18 Q Mr. Allen, were do you work?

A I'm retired.

19 Q Where did you work when you worked?

A I was personnel director of L. S. Ayres and Company for about 38 years.

20 Q Did your store do any business with the State?

A Oh, yes, I'm sure.

21 Q Were you an independent voter in that you preferred to remain anonymous in your political views

in the primary because of any political pressure that might be brought to bear, depending upon what administration would make up the State administration?

A No, I never was concerned about the relationship, my political views and the store's political views, never. It had no effect on me.

22 Q Did it occur to you, Mr. Allen, by expressing your preference in a primary election that you may be contributing toward electing representatives or public officials whose views coincide with yours?

A I'm not quite sure what you're questioning. I might put it this way: I have never pulled one lever and I voted in the Republican primary and I voted in the Democrat, and never pulled one lever in any case.

23 Q So you have—

A (Interposing) Both the primary and in the primary you have to identify yourself, correct?

24 Q Yes.

A And I have often identified myself as Republican in primary, then voted the way I liked the slate of the different candidates in the final election.

25 Q By virtue of that, do you think this classifies you as an independent voter?

A Yes, if you knew my motivation.

26 Q Don't you think you are—there are others that share your views and do as you do, that they may express an opinion in the primary election and vote perhaps in a different way in the fall election?

A Could I answer this in this way: I have had friends in both parties, who are very much disturbed because I don't pull one lever, so that puts me out of that question.

MR. FRANDSEN: No further questions.

MR. MANAHAN: I have no further questions.

(Witness excused)

WILLIAM SCHREIBER, a witness on behalf of plaintiffs, was recalled to the witness stand.

DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name, please.

A William Matthew Schreiber.

2 Q Are you the same Mr. Schreiber who testified earlier?

A I am.

3 Q Do you realize you are still under oath?

A I do.

4 Q I will ask you if you have had occasion to examine the voting records in the County Clerk's office for the spring primary and general election of 1968?

A Yes.

5 Q And that would be the exhibits earlier introduced, numbers 32 and 33?

A Yes.

[155-157]

6 Q Were you able to ascertain from examining those exhibits the number, the primary vote cast in the Ghetto Area during the 1968 primary?

A I was.

7 Q And response of that area to the four Presidential candidates who were before them?

A Yes.

8 Q Did this—was the vote in the Ghetto Area in that spring primary unusually high vote?

A I would say that it was, yes.

9 Q And was it more unusually high and higher in some parts of the Ghetto Area than others?

A Yes, it was highest in what is commonly known as the Lockfield Gardens area, or 12th Ward.

10 Q Was there a particular candidate whose vote was significantly high in that area?

A Robert Kennedy.

11 Q And what was the percentage of votes cast in these various wards in relation to the votes cast in the fall in the Ghetto Area?

A In the Ghetto Area, the percentage of the primary votes as compared to the fall vote was 73.2%.

12 Q And how was it in the remainder of the county comparing the primary and fall vote?

A In the remainder or county as a whole?

13 Q County as a whole.

A County as a whole, 59.9%.

[157, 158]

14 Q Did the, this percentage, did you calculate it for some individual wards?

A I calculated for the area I referred to as Lockfield Gardens, or 12th Ward.

15 Q What did it reach in that area?

A 86.01 of the fall vote.

16 Q Did the vote for other offices, other than Presidential vote and Robert Kennedy vote, was it as high?

A Not nearly.

17 Q I will refer you again to Exhibit 10 in evidence and ask you to state how many times since 1920 were you able to ascertain from the Secretary of State's records, has a candidate to the General Assembly been elected not withstanding the overall defeat of the party from which he was from?

A On two occasions, this occurred in 1922 and 1940.

18 Q How many candidates does it involve?

A In 1922 it involved three candidates from the Democratic party breaking through and winning.

19 Q And in 1941 how many?

A One Democratic candidate won.

20 Q This would be out of a total of how many candidates for the full period of years, how many seats at stake?

A This would be four out of 391 offices or vacancies to be filled.

21 Q How many individuals have been elected to those 391 seats at stake since 1920 in Marion County?

A 251 different people.

[158, 159]

22 Q What would be the average turn over of a legislator from Marion County?

A In terms of elections, each individual has been elected 1.56 times on the average.

23 Q Have you been able to ascertain the effect in terms of bloc representation that single-member districting would have in Marion County given bloc voting similar to the Kennedy vote for candidates representing their interest?

MR. JOHNSON: We object to that question. It calls for a conclusion of the witness. He has not been qualified as an expert.

MR. MANAHAN: I will withdraw the question temporarily.

24 Q Have you had occasion in the past to engage in districting for purposes of legislation to be acted upon by the General Assembly?

A Yes, I have.

25 Q When was the first such occasion?

A It would have been January, 1969.

26 Q Did you have any occasion to do it for other districting?

A Yes, in December of 1965 and January of 1966 I drew some districts for the County Council.

27 Q That was Marion County Council?

A Marion County Council.

28 Q Was that incorporated in apportionment statute?

A Yes.

[159, 160]

29 Q Did it provide for single-member district?

A Yes.

30 Q Was it acted on favorably by the legislature?

A It was acted on favorably by the County Commissioners of Marion County. The legislature had made it possible for them to act on such a measure.

31 Q And did the party with which you were affiliated win a majority or minority of single-member districts at the following election?

A A minority.

32 Q Did that districting provide for one man, one vote?

A Yes, it did.

33 Q How did you ascertain districts in Marion County on a one man, one vote basis for that first instance?

A I used 1960 census figures provided by the Department of Commerce Bureau of Census.

34 Q And you used such figures down to how close a territorial area did these figures cover and pinpoint?

A Territorially, I've worked by wards and precincts. Actually, by wards, there were only five seats in this and it was practical to do that.

35 Q And again in 1969, have you engaged in a single-member districting plan for Marion County?

Y Yes.

36 Q And were these incorporated in bills?

A In bills.

37 Q And were those bills introduced to this last preceding General Assembly?

A Yes, by Representative Bower.

38 Q What would these bills have done if enacted?

A One of the bills would have redistricted or reapportioned Marion County House delegation into single-member districts, 15, the other would have set up eight single-member senate districts from Marion County.

39 Q And how close to a one man, one vote were you able to get in this apportionment?

A Out of the 23 different seats, 22 of them were within 1% of the optimum or ideal. The other, I believe, was 1.05 or 1.06% away.

40 Q I will renew the question asked earlier. Have you been able to ascertain how many representatives hold the black interest and Ghetto interest would result from single-member districting in Marion County?

MR. JOHNSON: Again we object on the same grounds.

MR. MANAHAN: We think we have established his qualification, he has drafted single-member districts which was used in . . .

THE COURT: Objection will be overruled. We will allow the witness to answer the question and we will give weight to it.

A I believe that three representatives would be in some way representative of the black community and at least one senator.

MR. MANAHAN: I have no further questions.

[161-163]

CROSS EXAMINATION,

QUESTIONS BY MR. RICHARD JOHNSON

41 Q Mr. Schreiber, just a couple fast questions if I may. How many wards and precincts single-member districting plans are possible in Marion County that would meet the one man, one vote requirement?

A Well, since the census figures go down to a bloc I would say an infinite number.

42 Q From an infinite number, you have one plan to suggest to this Court?

A I work by census tract in most cases, so I have no vested interest in this plan.

43 Q Well, am I correct in saying since 1960 census tract?

A Yes, that would be correct.

THE COURT: Did you say recommendation to this Court? As I understand, it was made for recommendation to the legislature.

THE WITNESS: I made no recommendation. I only gave mechanical . . .

44 Q (Interposing) At the time you made the recommendation to the legislature did you take into consideration such factor as population mobility?

A I did not, I worked by the '60 census.

45 Q To what legislature were these recommendations made?

A To which House or which legislature?

46 Q Which year?

A 1969 session of the Indiana Legislature.

[163, 164]

47 Q So there were nine years intervening between the 1960 census and the time of your recommendation?

A Yes.

48 Q Do you know at the present time how many blacks are members of the legislature?

A From Marion County?

48 Q Yes.

A Yes, I think so.

50 Q How many are there?

A Three.

51 Q Now, talking about Robert Kennedy as appealing to the voters, weren't those totals recorded unusually high in other areas besides the areas you spoke of?

A Perhaps so, but not to the degree as the area of which we spoke earlier.

52 Q I am speaking specifically of areas outside of what has been delineated as the Ghetto Voting Area.

A I think it was higher than average turnout, yes.

53 Q Have you made a study, for instance, of the Darrington Heights area?

A I have made no study. I was there election day, I saw a heavy vote.

54 Q Did you make a study, that is what we are talking about. Is your study for recommendation of any areas outside the Ghetto Voting Areas in which Robert Kennedy ran usually high?

A I did not.

[164, 165]

55 Q So then, your conclusion is you have nothing to compare it with as far as the entire district is concerned?

A I have a non-Ghetto Area to compare it with and that . . .

56 Q (Interposing) That non-Ghetto Area includes everything except the Ghetto Area?

A That would be correct.

MR. JOHNSON: No further questions.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

57 Q How many Negroes are in the Indiana General Assembly Senate?

A From Marion County?

58 Q Yes.

A I don't know of any.

59 Q What is the total number in the Indiana House of Representatives?

A I don't know.

MR. MANAHAN: I have no further questions.

MR. JOHNSON: No further questions.

(Witness Excused)

MR. MANAHAN: We would ask the Court to take judicial notice of admissions 1 through 118 and failure of the State of Indiana to file any denial thereto on or before May 22nd, 1969, which is ten days after the determination of jurisdiction of the parties made by the Court and which was the time set by the Court to preliminary pre-trial conference for deadline to such denials.

We would also ask the Court to take judicial notice of Indiana Acts 1852, Volume I, page 205; Indiana Acts 1857, page 54, Section 9; Indiana Acts 1881, page 14; Indiana Acts 1891, page 140, 141; and Indiana Acts 1909, page 341, which Acts we will present, not verbatim, but we will argue to show data of growth from single-member districting at the local level in Marion County, Indiana to total multi-member districting and which we will present in conjunction with the rate of racial growth and census statistics we have presented with the other documents. We ask the Court to take judicial notice of those matters.

THE COURT: Do you have any objection?

MR. JOHNSON: No objection.

MR. MANAHAN: We have forgotten a plaintiff. I would have one last witness.

WILLIAM H. WALKER, JR. a plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTION BY MR. MANAHAN

1 Q State your name, please.

A William Henry Walker, Jr.

[166, 167]

2 Q Are you a plaintiff in this cause?

A I am.

3 Q And where do you live?

A 4309 Alder Street, East Chicago, Lake County, Indiana.

4 Q How long have you resided in Lake County?

A Intermittently for about 16 years.

5 Q Are you the William Walker, Jr. who is plaintiff in this cause?

A I am.

6 Q What is your race?

A Negro.

7 Q And do you regularly vote in Lake County elections?

A I do.

8 Q Do you regularly vote for General Assemblymen?

A Yes.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. FRANDSEN

9 Q Mr. Walker, how many representatives are elected from Lake County?

A 11 at large.

10 Q How many senators?

A Five.

[167, 168]

11 Q Do you know, of your own personal knowledge, whether any members of the 1969 General Assembly were Negro Americans?

A Yes, I know none of them were.

MR. FRANDSEN: I have no further questions.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. MANAHAN

12 Q Did that delegation sponsor legislation, the all-white section was to be taken out of Gary, Indiana?

A That's correct.

MR. MANAHAN: No further questions.

MR. FRANDSEN: No further questions.

(Witness excused)

MR. MANAHAN: Plaintiffs rest, Your Honor.

THE COURT: Gentlemen, during the recess you were asked whether it would be possible for you to proceed with the presentation of certain of defendant's evidence. You did make some telephone calls. As we indicated, we would be willing to continue hearing the presentation of evidence this evening, if at all possible. Do you have any comment or have you had any confirmation?

MR. JOHNSON: I haven't had any confirmation, Your Honor, but I am sure we will be able to present a couple witnesses for the Court's consideration this evening.

THE COURT: If the witnesses are here now would you like to proceed at this time or wait until after a recess?

MR. JOHNSON: The Witnesses are not here, Your Honor. I anticipate we will be able to get hold of them. I do have a motion to make at this time.

THE COURT: Very well. You may present your motion.

MR. JOHNSON: It's a very short one. The defendant, at this time, Your Honor, would move for judgment at the conclusion of the plaintiffs' evidence on one ground and one alone, and that is that the record at this point contains no evidence up-dating the 1960 census. It was upon the 1960 census the case of Stout against Bottorff was determined. That case redistricted the State of Indiana and the plan was traditionally approved, of course, into legislative districts. It is that case and that plan and that statute which was under attack here. Excuse me, Your Honor, may I interrupt. I have been informed just now we will have three witnesses this evening.

THE COURT: We will reserve ruling on your motion until after the recess and would 7:00 o'clock be acceptable to counsel present? If so, we will recess and reconvene at 7:00 o'clock.

(Court recessed at 5:05 P.M., reconvened at 7:20 P.M., and the following proceedings were had)

THE COURT: As indicated before the recess, a motion was made by the Attorney General for a directed verdict. The Court has considered the motion and the facts in the matter and the motion is hereby denied.

You may proceed.

MR. JOHNSON: We will proceed by calling Mr. Ed Bayloff to the stand.

EDWARD BAYLOFF, a witness called by defendant, having first been duly sworn testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. RICHARD JOHNSON

1 Q Will you state your name to the Court, please?

A Edward J. Bayloff.

2 Q Are you married, Mr. Bayloff?

A Yes.

3 Q Have any children?

A Three.

4 Q Where do you reside?

A 4502 Patricia Street, Indianapolis.

5 Q Where are you presently employed?

A Metropolitan Planning Department of Marion County.

6 Q Is that Indianapolis, Indiana?

A Right.

7 Q How long have you so been employed?

A Eight and one half years.

8 Q What is your capacity with Metropolitan?

A Associate planner.

9 Q Can you briefly describe the duties of an associate planner to the Court?

A It's rather hard to describe all the duties. My work, at different times, takes me into almost every field of planning in the detailed work. I am particularly involved in any statistical information that is needed. This, of course, is directly derived from U. S. Census Bureau and also from surveys which we are able to make from time to time.

10 Q Can you briefly describe to the Court the duties of your office in connection with the U. S. Census Bureau?

A Well, as far as my person is concerned, I am currently the chairman of the Marion County Census Tract Committee, you might call it the Indianapolis SMSA census tract committee, since we now have eight counties in the standard metropolitan statistical area. It is my job, both as a member of the Department and as the key person for census materials, to coordinate information with individuals and the public in this area and the census bureau materials that are available or shall become available.

11 Q How long have you served in that capacity—how long has the Metropolitan Plan Department served in that relationship?

A The Metropolitan Planning Department has served in that relationship since approximately 1957.

12 Q I will now hand you what has been marked for identification as defendant's exhibit A and ask you to explain to the Court what that is?

A We have here a number of maps, most of which were compiled by myself or other members of the Metropolitan Planning Department. Perhaps one or two, yes, one or two were compiled by the Community Service Council of the Metropolitan Indianapolis. In addition to the maps, which indicate in some places census tracts and in other places the amount or number of persons in each census tract or the family income in each census tract, et cetera, we have also projections from 1960 through 1969 of Marion County, Indiana in each of the nine townships therein.

MR. JOHNSON: I will now offer into evidence what has been marked for identification as defendant's Exhibit A.

MR. MANAHAN: We would like to examine it further if you could go on to another exhibit.

MR. JOHNSON: We have a series of exhibits. I am asking the reporter to mark each one of them individually all at one time.

MR. MANAHAN: We are prepared to ask preliminary questions on Exhibit A.

MR. JOHNSON: In order to save the Court's time, may I make the suggestion we will ask defendant's Exhibits B, C, D, E and F be offered after identification?

MR. MANAHAN: Well, all right.

MR. JOHNSON: We will withdraw our offer on A at this time.

MR. MANAHAN: Well, OK.

13 Q Now, Mr. Bayloff, I will hand you what has been marked for identification as defendant's Exhibits B, C, D, E, F and G and ask you to tell the Court, please, what each of those exhibits are?

A Exhibit B is a summary report of Metropolitan Indianapolis housing study which was completed by other members of the Metropolitan Planning Department in conjunction with Hammer, Green, Siler and Associates as consultants.

Exhibit C, rather than a summary report, is the first technical work paper which deals with preliminary projections of housing needs, also completed by the same group of persons.

Exhibit D is technical work paper number two regarding resources for housing supply for the period 1967 to 1985, same authors.

Exhibit E is technical work paper number three dealing with consumer characteristics of housing demand from 1967 to 1985, same authors as the previous.

Number F is operations plan of Metropolitan Indianapolis for continuing planning program for the years 1967 to 1970, this was also completed by members of the department with Martin Ashman Associates of Chicago as consultants.

Item G is a summary report named transportation and land development plan for the Indianapolis region, this is a summarized report of a study for transportation and development that included the area of all of Marion Township plus certain urbanized areas into Hamilton County on the north and Johnson County on the south, I think I've mentioned this study cost over a million dollars. Very much work went into it, this was a program that had at least four sponsors, but I can recall the Indiana State Highway Department, the City of Indianapolis, the Metropolitan Planning Department of Marion County, I am sorry, I think there is probably another sponsor that escapes me at the moment.

14 Q Now, do any of these identified documents, documents marked for identification, contain studies as to mobility of population within Marion County?

A I believe included in item A there was a map which concerned mobility from 1950 through 1960, this was shown in map form and I believe statistical data is available to you to show the mobility by census tract in Marion County from 1950 to 1960; the period from 1960 to '64 mobility was ascertained because of the change between the 1960 census data and the transportation and development study which went into great detail and the differences in statistics would indicate among other things mobility.

15 Q Do any of the exhibits about to be offered pertain to crowded dwelling units within Marion County?

A Yes, I am quite sure one of the maps does pertain to that specifically.

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16 Q Do any of the exhibits relate to a fairly large percentage of owner-occupancy?

A Yes, that is correct.

17 Q Do any of the exhibits contain a bird's eye view of land uses throughout the district?

A If I might look through the list of exhibits again, I believe it's there, but I would like to be sure. Yes, existing land use as of 1961, later data is available at the office of the Metropolitan Planning Department.

18 Q Which exhibit is that?

A It's one of the items in Exhibit A.

19 Q All right. Does anything in Exhibit A, for instance, pertain to the use of parks throughout the district?

A Yes, there is a map that indicates a park plan for all of Marion County, Indiana.

20 Q Does anything in Exhibit A or the other exhibits indicate the condition of housing as of 1960 or later?

A Yes, there is a map in Exhibit A.

21 Q Was Exhibit A or any of the other exhibits prepared under your supervision and at your direction?

A I would say that many of them were prepared by me personally. I would have to go through them one by one, if you want to go to that detail, but

I certainly personally compiled at least half of the exhibits in A.

22 Q Would you say all of the exhibits in A were prepared at your direction?

A No, as I mentioned earlier, some of them were made by the Cumulative Service Council and it is possible that there may be one or two prepared by the Chamber of Commerce of Indianapolis.

MR. JOHNSON: All right. I will now offer in evidence what has been marked for identification as defendant's exhibits A through G, inclusive.

MR. MANAHAN: I have a preliminary question with respect to A.

23 Q (By Mr. Manahan) Relating to the last three pages which, unlike the others, are unnumbered, the others being numbered one through 24 and all of which appear to be identical, can you tell me specifically what those last three pages are and how that data was compiled?

A Yes, these are population estimates by townships in Marion County, Indiana. They were compiled by me for each township and total for Marion County. The figure for the 1960 census, of course, was taken directly from the 1960 census materials. The 1964 estimate came directly from the Regional Transportation and Development Study. The 1965 and 1966 estimates and I believe, yes, 1965 and '66 estimates were completed by me using the same mathematics they show that occurred from 1960 to 1964. I carried out, I took one fourth of that number and added it for 1965. I did the same for 1966. By the time we came to 1967 I did not want to merely add arithmetically the same numbers because I felt the population growth was probably increased a little more, therefore I took the same percentage of increase that occurred in 1966, I used it to arrive at the 1967 figure, the percentage for '67 I used for the '68 figure and '69 figure.

24 Q So the only thing subsequent to 1960 was which figure again that was an outside source?

A The 1964 estimates which came from the Regional Transportation Development Study.

25 Q Is that the raw data for data in any of the other exhibits?

A Not in those exhibits I don't believe. The summary may have it in that. It's the summary report there, the third one, item G, is it?

26 Q I will hand you Exhibit G—

A I'm not sure it's contained in the summary in exactly the same way. It has the same total statistics here, however, they are given by sectors and by districts which do not correspond directly to townships. Zones which are sub-parts of a district are comparable with townships.

27 Q Then based on that, the very same thing you have done with respect to townships could be done on sections and zones; would that be correct?

A No, for the reason that the sectors in at least to the north and south extend beyond Marion County.

MR. MANAHAN: We are not objecting to any of this; we just wanted to know the source and we will have something to say later.

MR. JOHNSON: I have nothing further with this witness.

(Witness excused)

MR. JOHNSON: I call Mr. Hanley, please.

J. FRANK HANLEY, a witness called by defendant, having been first duly sworn testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. RICHARD JOHNSON

1 Q Will you state your name to the Court, please?

A J. Frank Hanley.

2 Q Where do you live?

A 1545 Thomas Woods Trail, Indianapolis.

3 Q And how long have you lived there?

A Approximately three years.

4 Q Are you currently employed?

A Yes.

5 Q Where are you employed?

A I am employed at the Indiana State Attorney General's office.

6 Q And at my request and at my direction, did you prepare some exhibits?

A Yes.

7 Q Mr. Hanley, I will direct your attention to what has been marked for identification as defendant's Ex-

hibits H and I and ask you to tell the Court what those are.

A Well, these particular exhibits, Exhibit H is the percentage of votes cast in the 1968 General Election by district for the Senate and the blue symbols symbolize the multi-district percentage for the whole State of Indiana. The red symbols symbolize the percentage of the vote for the State of Indiana and the black symbols, there is one on each, symbolizes the percentages of the votes for Marion County and Exhibit I does the same thing for the House of Representatives. The black symbol symbolizes Marion County, the red symbol shows the single-district percentage, the blue symbol shows the multi-district percentage.

8 Q And when you say percentage of votes, what do you mean?

A The total population of the vote, the registered vote in that area, in that district.

MR. JOHNSON: I offer in evidence what has been marked for identification as Defendant's Exhibits H and I.

MR. MANAHAN: No objection.

MR. JOHNSON: Nothing further, Your Honor.

THE COURT: Mr. Manahan, you have no questions?

MR. MANAHAN: No questions.

(Witness excused)

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DR. ROBERT A. CALHOUN, a witness called by the defendant, having been first duly sworn testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. RICHARD JOHNSON

1 Q Will you state your name to the Court, please.

A Robert A. Calhoun.

2 Q And were do you reside, Dr. Calhoun?

A 4759 Kessler View, Indianapolis.

3 Q Will you tell the Court, please, something of your educational and professional background?

A I have a Doctor's Degree from Indiana, I have been working with the State Board of Health for 15 years as Director of Public Health Statistics.

4 Q Where did you go to school and when did you graduate and what degrees do you have?

A I graduated from Sterling College in Kansas with A.B. Degree in 1941, I have a M.A. Degree from George Peabody College in Nashville, Tennessee in 1950 and D.Ed. Degree from Indiana University in 1956.

5 Q Doctor Calhoun, has the State Board of Health, or you specifically, had occasion to make population estimates concerning Marion County?

A Yes, we have made population estimates for the State Board of Health for 20 years for each county in the State.

6 Q And what are those estimates, do you know those figures?

A For Marion County? No, I don't know offhand. I'd have to see it.

MR. JOHNSON: I apologize to the Court, but we have so many exhibits we have the paper works sort of mixed up.

7 Q Doctor Calhoun, I will now hand you what has been marked as defendant's Exhibit J and ask you to tell the Court what that is, please.

A This is the Indiana Vital Statistics Report for 1967, which is prepared by the State Board of Health under my direction.

8 Q Was that booklet prepared under your direction, under your supervision and at your direction?

A Yes.

9 Q How long ago was it prepared?

A This was completed, I believe, in January of this year.

10 Q Does that booklet contain any population as to, concerning Marion County?

A Yes, it does. These estimates are July 1st, 1967 and the Marion County estimate is 762,000.

11 Q Is Marion County further divided in any way?

A We also make estimates for all cities that have 5,000 or more population at the time of the 1960 census, which would include Beech Grove, Indianapolis, Lawrence and Speedway.

MR. JOHNSON: We will now offer in evidence what has been marked for identification as Defendant's Exhibit J.

MR. MANAHAN: No objection.

MR. JOHNSON: Nothing further.

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CROSS EXAMINATION,

QUESTIONS BY MR. MANAHAN

12 Q Can you state the basis for these estimates, what sources are resorted to, what underlying sources are used, if any?

A Yes, the basis for the estimates is the 1960 census, from that we use three types of figures to make the estimate, one of these is the birth rate, second is the death rate, and a third is the estimate of the net migration into the area and this is derived from school enrollment data, generally following the method which the census bureau has followed over a number of years.

13 Q Does it then cover only counties or does it go within counties and within cities?

A We have cities who had 5,000 or more population in 1960.

14 Q You have township census?

A No, we do not.

MR. MANAHAN: I have no further questions.

MR. JOHNSON: Nothing further.

(Witness excused)

MR. JOHNSON: That concludes the witnesses we have available this evening. We will have two more tomorrow. I do have some further documentary evidence to introduce at this time.

MR. MANAHAN: Are you introducing the Acts themselves?

MR. JOHNSON: Certified copies.

MR. MANAHAN: Let me say we have no objection.

MR. JOHNSON: I now offer into evidence some 33 certified copies of statutes enacted by the 1969 legislature, having application to Marion County. These documents have all been marked as defendant's Exhibit K, however, I would, for the record, like to enumerate them. They are all Acts of 1969, have chapters 298, 49, 63, 147, 136, 171, 174, 205, 272, 317, 376, 134, 357, 58—strike that last—458, 464, 149, 150, 249, 93, 212, 43, 274, 366, 235, 283, 389, 242, 352, 60, 105, 359, 429 and 173. We are now offering all of these chapter numbers which have been marked as one exhibit, defendant's Exhibit K.

MR. MANAHAN: No objection.

THE COURT: It may be received.

MR. JOHNSON: Nothing further, and that concludes our presentation of evidence this evening, Your Honor.

THE COURT: Mr. Byrum, are you going to present anything?

MR. BYRUM: I haven't—I'm not prepared.

(Off the record dscussion)

(Court adjourned at 7:55 P.M.)

Indianapolis, Indiana
June 18, 1969

Court convened at 10:30 o'clock, A.M., and the the following proceedings were had:

THE COURT: I presume then, gentlemen, we are prepared to move in the Chavis case. As we indicated we passed upon certain motions yesterday. It is the matter of Patrick Chavis versus Edgard D. Whitcomb; John C. Ruckelshaus.

This case comes before the court on certain pretrial preliminary motions. The motions and the rulings as to each of them are as follows:

Number one. Plaintiffs' Motion to Have This Case Declared a Class Action Pursuant to Rule 23, Federal Rules of Civil Procedure.

Plaintiffs' complaint asserts that this action is filed as a class action covering five subclasses of voters and residents of Marion and Lake Counties. The presence of the intervening defendants as well as the court's own knowledge reveal that the class sought to be maintained is so broad and heterogeneous and has such a disparity of interests that it is not possible for the court to recognize any representative party who could fairly and adequately protect the interests of the class. Rule 23 (a) (3) and (4), Federal Rules of Civil Procedure. Wherefore, it is not possible to maintain this action as to any class alleged to exist under Rule 23(b), Federal Rules of Civil Procedure.

It is stated in the complaint that each of the plaintiffs is both a resident and a voter of the aforesaid counties. This assertion has not been denied or controverted by defendant and therefore must be taken as admitted. We find that these individuals have standing to sue and can properly maintain this action. Citing Baker versus Carr, 369 U.S.

186, at 204-208 (1961), and cases cited therein. Cf. 42 U.S.C. § 1981, et seq.

The second motion is Petition by Certain Persons to Intervene as Parties Defendant.

The motion by the petitioning intervening defendants for leave to intervene is granted nunc pro tunc as of June 12, 1969, pursuant to Rule 24(b)(2), Federal Rules of Civil Procedure. It is a general principle that intervening defendants enter the case as they find it, bound by all orders and proceedings prior to the date of intervention.

The third motion, Intervenors' Motion for Continuance.

In considering this motion the court observes that permissive intervention is, by definition, at the discretion of the court and subject to the rule of doing substantial justice to the original parties. Rule 24, Federal Rules of Civil Procedure expressly provides that "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

The court finds that this action is before it on an emergency basis due to the time factor necessitating the final resolution of this case prior to the date for first setting in motion the machinery for the next primary election for the representatives and senators to the 1971 Indiana General Assembly. Moreover, both original parties have indicated to the court their reasonable expectations that the findings made by this court will be appealed.

The original parties have been engaged in preparations for trial in expectation that trial would commence on June 17, 1969, as ordered by the court on May 12, 1969. Accordingly, the court finds that justice will not best be served and prejudice will entail to the original parties if the intervenors' motion for continuance is granted; wherefore, the motion is denied. Cf. 4 Moore, Federal Practice, § 24.10(4), § 24.13(1) (2 ed. 1968).

As to the fourth motion, Defendant's Motion for Continuance.

Defendant moved for a continuance alleging that he has not had sufficient time to ascertain the accuracy of various exhibits prepared by plaintiffs and alleging that he may be prejudiced by permitting the intervention referred to in two, supra. On oral argument of the motion, defendant relied only on the latter ground. In view of our disposition of the petition to intervene and the intervenors' motion for continuance in two and three above, defendant's objections have been rendered moot; wherefore, the motion is denied.

As to the fifth and final motion presented to us, Plaintiff's Motion to Strike Certain Pleadings as Sham.

The court finds that this motion has been rendered moot by statements made during oral argument of the motions hereinbefore discussed; wherefore, the motion is denied.

Signed by Otto Kerner, Court of Appeals Judge; William E. Steckler, U. S. District Judge; James E. Noland, District Judge.

The order will be entered as of today.

We are ready to proceed, however, during the recess when we were considering the motions you argued this morning Mr. Byrum indicated he would like final argument of 20 to 25 minutes. The court has considered argument time at the conclusion and presentation of all of the evidence one hour will be allowed to each side, a one hour total.

Now, I would, of course, like to bring to Mr. Manahan's attention if he wishes time for rebuttal he will necessarily reserve time from the one hour alloted to him. The defendants will abide their time to one hour as they so see fit.

We are prepared to hear your further witnesses.

MR. JOHNSON: We are prepared to proceed and we would like to do so by calling Mr. Charles Whistler.

CHARLES L. WHISTLER, a witness called by defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. RICHARD C. JOHNSON

1 Q Will you state your name for the record?

A Charles L. Whistler.

2 Q How do you spell your last name?

A W-h-i-s-t-l-e-r.

3 Q What is your occupation?

A I am an attorney.

4 Q And where are your offices located, where do you practice?

A 810 Fletcher Trust Building, Indianapolis.

5 Q Do you have a connection with Metropolitan Plan Commission?

A Yes, I am president of Metropolitan Plan Commission.

6 Q How long have you been president of the Commission?

A Since January, 1968.

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7 Q Can you identify for the Court the origin and authority by which Metropolitan Plan Commission was created?

A The Metropolitan Plan Commission was created by a 1955 statute applicable only to Marion County, it has been amended a number of times, in subsequent sessions of the Indiana General Assembly. The statutory authority of the Commission is quite broad, it has responsibility for all zoning matters in Marion County including all municipalities in Marion County. It has responsibilty for land use plan throughout the county for captal improvement planning or approval of all capital improvements made by any agency of government in excess of $25,000.00. It has authority and responsibility to approve or disapprove any plans for redevelopment or urban renewal and a broad range of responsibility planning all sorts of municipal facilities.

8 Q To your knowledge does Indianapolis have what is commonly known as home rule?

A No it does not, under Indiana law the municipalities are creatures of the state legislature and have only such power as are specifically delegated by the legislature.

9 Q Therefore our urban problems related to planning and zoning in the metropolitan Indianapolis to which this county operates under a legislative enactment, that is legislative enactment having . . .

A Yes there are several such laws which have been passed over the years that are applicable only to Marion County.

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10 Q Can you identify those?

A Yes, the park system in Marion County is operated as a metropolitan park system under a specific statute applicable only to Marion County, the cemeteries solid waste and sewage disposal statute applicable only within Marion County, in the transportation area there is a 1965-passed metropolitan full fare statute applicable in this county, the airport authority is applicable only in this county, the redevelopment activities, housing authority activities, storm drainage, health and hospital corporation are all functional units that were established under special legislation applicable to Marion County.

11 Q Considering some of the specific areas, take parks for instance, that you just mentioned what are some of the problems concerning parks that are germane to the district as a whole?

A Parks is an excellent example of a function of government which can only be dealt with on an urban basis. There are about four different gradations of classifications of parks, there's a neighborhood park typically small neighborhood playground type facility, then we have gone up to the ball field, ball diamond, swimming pool, type of facility which of course is lesser in number and more dispersed throughout the community. The third gradation would be the golf course, something that uses a lot of real estate, and a fourth would be such as our Eagle Creek Park here, much larger parks still which provide such things as camping sites, now these are facilities which of course are available and used by all residents in the community and those are the sorts of problems dealt with on an urban-wide basis.

12 Q Can you likewise tell the Court something of the county-wide problems concerning sanitation which you mentioned?

A Yes, again this is a problem that essentially can only be dealt with on an urban-wide basis. The matter of simply gravitational design making the sewage float downhill to a common collection facility is a matter that is tied into the entire community. The disposition of a disposal facility, it is on the same basis; you recently had an experience here in this county where one of the subdivisions or small towns north of the city, Meridian Hills, which has a very expensive housing was producing a lot of pollution from their septic tanks that was running downstream through the city, the result of that was to require sewers to be installed but this is an illustration of the point the problem is an urban-wide problem, solid waste disposal which is another function of the Sanitary Board. Of course this is exactly the same thing, the matter of trash collection and trash disposal throughout the urban area whether it be by one large incineration or incinerator approach or some other land-fill or other means which have to be dealt with on really urban-wide basis.

13 Q One of the areas you mentioned is the matter of adequate housing, can you identify that for the Court and also if I may in the interest of saving time add another question; identify problems of relocation within the city?

A We have had housing is another example of problems that really had to be solved on an urban-wide basis we have experienced in this community through the relocation of highways, building of highways down through the inner-city and in our own unique experience of the elimination of housing for several thousand people of the near west side by virtue of land bought for Indiana University, University Quarter, the displacement of a very large number of people, some of these people had to be provided public housing in order to be relocated, we have had in this community through the Indianapolis Housing Authority the construction of very substantial amounts of public housing. Public housing has been located on the west side a distance of a mile and a half or so from the downtown area, it has been located out on the southeast side two substantial locations perhaps two and a half to three miles from the downtown area, it has been located on the far east side in Warren Township or Emerson Avenue, it has also been located on the northeast side so we have replaced the housing with people who were displaced by utilizing the entire urban area.

14 Q In your opinion would . . .

> THE COURT: I think we find if counsel stands before the bench, the reporter has difficulty with this system we use. Keep in mind that she is talking while you are talking and it does create some . . .

15 Q We were talking I believe, Mr. Whistler, about the problems of urban renewal, can you give the court some idea of the density of housing within what is known as the inner-city area as compared to the density of the housing without this city area over the last ten years perhaps?

A Well, the inner-city and it would be roughly a circle of perhaps two miles around the center has the common characteristic as the older section of the city the housing is built on much smaller lots, is much denser than it is as you move on out to the more suburban portions of the city, portions of the city that were constructed at a later time, because of age, other circumstances you have had a greater degree of deterioration throughout that area than is true in the more recently constructed facilities. As I mentioned, the Plan Commission has the responsibility to approve urban redevelopment activities of the community, in the last few years has moved very strongly away from the clearance idea to the idea of rehabilitation and conservation. We have had three specific studies of three areas within this perimeter I have spoken of. We have elaborate analysis where the problems were degree of dilapidation and affirmative action programs of those problems and some of them have already been implemented.

16 Q Now will you tell the Court of what those three studies are and where those areas are located?

A Yes, the first one that was done was the area commonly identified as the Mapleton-Fall Creek area, that is an area that is bounded by Meridian Street on the west, 38th on the north, and Fall Creek Boulevard goes across the south, forms the third boundary of that property, that was the subject of a study and an analysis, population analysis, an elaborate statistical analysis in cooperation with the residents of the neighborhood I might say and it has been funded as a federal program code, code enforcement program and there have been very heavy expenditures and rehabilitation in public facilities and a great deal of work done in rehabilitation of housing, it's basically a conservation program and it is a subject of studies and work papers done by the Plan Commission.

17 Q Mr. Whistler, I will now hand you what has been marked for identification as Defendant's Exhibit L and ask you to identify the same for the Court.

A Exhibit L is the report of our Mapleton-Fall Creek neighborhood land use plan and summary of our policy recommendations that was adopted by the Metropolitan Plan Commission.

18 Q Does this plan have any statistics in it relating to the racial characteristics of the neighborhood study?

A Yes.

19 Q And what do those statistics reveal if anything?

A In the Mapleton-Fall Creek area in the 1960 census there was 12,305 white residents and 251 non-white residents but it was 98 percent white composition in 1960. In 1968 it had turned almost to a fifty-fifty division, there was 6,912 white residents, 5,888 non-white residents. We also have income statistics and employment statistics and other things in the report.

20 Q What can you tell the Court of the income and employment situation regarding the residents of the area study?

A Yes, the most recent figures we have from this study on immediate income was $6,435.00 as the media income in 1959, we did have the projection of income of $10,694.00 by 1985. On employment the statistics show in 1960 there was 2.8 percent male unemployment and 4.1 percent female unemployment but by 1968 there was less than one percent unemployment for both males and females throughout the area.

21 Q Now, Mr. Whistler, I will now hand you what has been marked for identification as Defendant's Exhibit M and ask you to tell the Court what that is.

A The Exhibit M is another of our neighborhood analysis calculated pointing toward rehabilitation efforts, conservation efforts, not clearance efforts, this one was for the Crown Hill neighborhood. The Crown Hill area would be an area adjacent on the west to the one I have described as the Mapleton-Fall Creek area.

22 Q Does that exhibit contain any statistics relating to that neighborhood concerning the racial characteristics, income or employment?

A Yes, substantial statistics, the 1960 racial composition of the area it was 27 percent white and 73 percent non-white. The housing conditions in classified by good, fair, poor, very poor, was 59 percent good, 38 percent fair, 1 percent poor, and 2 percent very poor of the single family dwellings and then there is a breakdown, detailed breakdown into all different conditions of commercial, multi-family, so forth.

23 Q Mr. Whistler, I will now hand you what has been marked for identification as Defendant's Exhibit N and ask you to tell the Court what that is.

A This is third of the three sub-area studies that I referred to, this was the Highland-Brookside area, another one of the older neighborhoods of the city, this is on the near east side. It is an area roughly bounded by College Avenue on the west, Sherman Street on the east, Massachusetts Avenue on the north, and Washington Street on the south, encompassing a population of about 35,000 people and it was our detailed analysis of the condition of the area and the physical conditions and a detailed plan of what needed to be done to conserve the area, to rehabilitate the area and to make it a good continuing stable neighborhood.

24 Q Do you have, have any other sub-area's studies been conducted by the Metropolitan Plan Commission?

A These are the three principal ones, we have had some less detailed studies made in other areas. We have done some work on what is identified as R68, a project on the southern near south side of the city; on what we describe as R70 project on the northeast side of the city, but these are the three to which we have given the greatest amount of attention.

25 Q One question I should have asked concerning Exhibit N, are there any statistics contained within that exhibit pertaining to the racial, economic, or employment circumstances of the people located in that neighborhood?

A Yes, the racial composition of the Highland-Brookside area, the east side area is, was by the 1960 census figure was 4 percent non-white, 96 percent white, in terms of the housing condition in that area the study also demonstrated or a 1967 analysis of the housing condition was 34.7 percent of the housing was sound, 60 percent was deteriorating and 5.3 percent dilapidated. It was an area which needs some attention and needed it soon if it is to avoid going downhill.

MR. JOHNSON: Defendant will now offer into evidence what has been marked for identification as Defendant's Exhibits M, N, and L.

MR. BEATTY: We have no objection to the admission of these.

THE COURT: They will be received.

26 Q Now, Mr. Whistler, going back to some of the main problems concerning the district as a whole which you have touched upon, the remaining problems are for instance storm drainage and flood control, of what interest does the county as a whole have in storm drainage and flood control?

A Well, we—it is one of the most significant county-wide problems we have. There is specific statute empowering flood control board for Marion County. The difficulties and expenses associated with curing the problem are immense, many of the areas that developed initially made no adequate provision for drainage so that as other areas come along and develop the making of adequate provision there doesn't really help the problem where other provisions were not made. The consequences you have, you face very substantial property damage problems by reason of storm drainage, very substantial governmental expenditures on such things as replacing roads, bridges, things of this caused by drainage problems, some considerable progress has been made in the area on a flood control reservoir on the west side but it in the future is going to be one of the most expensive and most significant problems for health, pollu-

[202, 203]

tion, and damage safety of the government of this community.

27 Q And likewise what interest does the district as a whole have in environmental sanitation?

A Well, here we have a Health and Hospital Corporation which is a county-wide district, a separate taxing district and is an independent municipal corporation established by the legislature in 1951 for Marion County. It has the primary responsibility for environmental sanitation, septic tank installation, disease control, providing health services, clinical services in neighborhood areas, these are problems of course it gives attention to throughout the county.

28 Q Mr. Whistler, do you have an opinion as to the ability of the district as a whole to cope with these problems you named without enabling legislation referred to and other similar legislation that may be needed in the future?

A Yes, I have an opinion.

29 Q What is that opinion?

A It seems to me the problems of an urban area are unique problems, different from problems in many other areas of the state and it is essential to have the tools of this sort available to an urban area to enable it to cope with its problems and solve its problems.

30 Q Does it in the course of its business, does the Metropolitan Plan Commission have occasion to accumulate statistics that would form the basis for the solutions proposed to these problems you have been talking about?

A Yes.

31 Q What are the sources of those statistics?

A We do a substantial amount of accumulation of statistics by departmental personnel, we use consultants to accumulate statistics and we also accumulate figures in work done by other departments of government both state and local.

32 Q Mr. Whistler, I will now hand you what has been marked for identification as Defendant's Exhibit O and ask you to tell the Court what it is?

A This is a map which portrays the movement of non-white mostly Negro population at various points and location of it at various points in the history, 1950, 1960, and 1965 showing the degree of movement, degree of integration that has been accomplished in this community.

33 Q And what is the source of that map and those statistics shown thereon?

A The map came from the files of our department, the Plan Commission, we have been using it, it was prepared and given to us by the Indiana Civil Rights Commission.

MR. JOHNSON: At this time the defendant will offer into evidence what has been marked as Defendant's Exhibit O.

MR. BEATTY: We have no objection to the admission of this document.

THE COURT: It may be received.

34 Q Now, Mr. Whistler, I will hand you Defendant's Exhibit O and ask you a few questions concerning same. Does that exhibit show a marked movement of Negro population?

A Oh, yes sir.

[205, 206]

35 Q Can you give the Court an idea what that movement is?

A Yes. Since 1960 there has been a considerable movement of the Negro population eastward all along 38th Street, south of 38th to Massachusetts Avenue, perhaps a distance of two and one half miles of area where there is now integration that did not exist before 1960. Likewise a moving northward from Fall Creek, in the center area of the community there has been a very substantial amount of integration extended from Fall Creek northward on up to 46th Street and above 46th Street with a very large number of integrated blocks that have developed in that interim. Northwestward outside the city limits there has again been a very large development of integrated areas, very substantial integrated areas developed then throughout the community at many spots all over east, west, north, south and suburban and outer edges of the city as well as in the inner edges of the city or near center of the city development of many different areas where integration is developing. In addition to that in the center city there has been on the north, near northside a substantial amount of development of white or integrated housing in that area.

36 Q Can you give the Court a general idea as to the condition of the community and/or the district as a whole concerning integration and dispersal of the non-white population?

A Oh, it's perfectly clear that the Negro residents are moving to many different locations that they did not reside in prior to 1960, that that condition has accelerated in the last two or three years but that you have a situation of non-white population dispersed throughout the community.

37 Q Do you have any children, Mr. Whistler?

A Yes, I have three.

38 Q Are they currently enrolled in any educational institution within the city?

A Yes, I have one son in Broad Ripple, two in School # 84.

39 Q How long has your son been in Broad Ripple?

A Three years.

40 Q From your own personal knowledge can you give the Court an idea of the racial complexion of Broad Ripple High School at the time he entered?

A Yes, with his freshman class there were I think 600 in the class and something like 150 or 200 of them were Negro children and the remainder were white children.

41 Q And what is the racial characteristics of Broad Ripple High School at the present time enrollment?

A The exact figures I couldn't give you, there are several hundred Negro children in the school and I think the total student population of the school is, I would judge, in the neighborhood of 2,000.

42 Q Can you tell the Court where Broad Ripple High School is located?

A Yes on 62nd Street about four or five blocks east of College Avenue in the north, northern part of the city.

[207, 208]

43 Q Going on to another subject, Mr. Whistler, did you or have you connection with Chapter 298 of the Acts of Indiana 1969 commonly known as the Unigov law?

A Yes.

44 Q And what is that connection or what was it?

A I was one of the chief draftsmen of the bill and spent a good deal of time with the legislative delegation and other members of the General Assembly urging its passage.

45 Q And do you have an opinion as to the effect of that bill on a participation by the Negro or non-white in government and its impact on the neighborhoods with reference to these particular problems you spoke of?

A Oh, yes.

46 Q What is that opinion?

A Well, under the Unigov bill there are twenty-five legislative districts for the combined City-County Council which requires that the member of the Council reside in the district and be elected by members of that district so simply on a basis of mathematical calculation population of the Negroes in the community it is reasonable to forecast there will be anywhere from six to eight members of the Council who will come from districts that have predominantly Negro population. What I am saying is that there will be several, obviously several members of the City-County Council who will not only be Negroes but be residents of areas that have had special problems and perhaps some lack of attention in the past and of whether the problem is picking up junk cars or not taking care of the streets or whatever, but I think those problems will be brought to the attention of the Council that has the power to do something about it. Now on the financial side of that legislation the control of public expenditures is largely or almost totally removed from independent boards and pulled back under the combined City-County Council so that you have a Council that under that law can allocate the resources of the community to the problems of the community in the priorities that the elected representatives of the Council deem to be most advantageous to the community. Thirdly by the elimination of a lot of duplication and overlap and combining of functions, I think it will plainly make government more responsible to the citizens' problems, complaints, better able to respond. I would submit that on all three grounds areas of the city which have perhaps suffered from lack of attention in the past will receive more attention, more resources and there will be more spokesmen, more legitimate, bring forth to the public's attention, to the Council's attention problems of their areas.

47 Q Now in connection with your work on Unigov did you have opportunities to study other large metropolitan areas elsewhere?

A Oh, yes.

48 Q And what did you find, what other areas did you study?

A Well, throughout this country governmental form, the legislative form has been very slow. There have only been two what would be termed very significant major changes in governmental structure, they occurred in Nashville, Tennessee, and Jacksonville, Florida, but otherwise legislators have not been notoriously responsible to the needs of urban metropolitan areas.

49 Q Mr. Whistler, one final question or series of questions. If Marion County, if the Marion County legislative delegation were divided into single-member—Strike that. If Marion County were divided into single-member districts would you have an opinion as to the ability of this urban area to procure enabling passage of legislation for resolution of the urban problem?

A Yes.

50 Q What is that opinion?

A I think it would be immensely difficult for this community to get from the legislature some of the legislation that has been obtained over the past, what is essential, special legislation for the solution of a particular local problem. I think it is clear that when the legislature sits over in the State House they are not particiularly thrilled with having to deal with local problems of each of the major municipalities of this state, and that if a particular legislative delegation went to the legislature divided, substantially divided on what that delegation wanted for its county it would probably get nothing and I think that has been demonstratively true in the past.

51 Q Can you tell something more of the basis or foundation or reliability of that opinion, and what source, and from what source or sources you have acquired this opinion?

A Not only the investigation of what has happened in other legislative experiences around the country, the Plan Commission has used the services of governmental consultants of Hammer, Siler, and Green, Washington, D. C. Phillip Hammer, who is an economist and head of that company, is also president of the Metropolitan Planning Commission of the District of Columbia and in the course of consulting with him, discussing with him the Unigov matter, he confirmed the opinion that the experience around the country, particularly since one man-one vote has become the law of the land, has been that suburban legislative representatives have tended to move away from rather than toward supporting legislation for single cities and that the unified legislation for metropolitan areas are prerequisite to reasonable expectation of passing legislation or solution of that metropolitan area's problems.

THE COURT: I don't believe I got all of that, would you mind going through that again, moving away from . . .

A Yes. Where a legislative representative who has a constituency, a suburbanite constituency, he is from an area of new homes that don't have problems of poverty and other problems and when that man becomes responsive only to that constituency, Mr. Hammer says his experience has been that legislation leader tends not to identify and support the resolution of innercity problems. He identifies his constituency and of course as having different needs and so the result has been instead of having representatives from the metropolitan area speak with one voice on the subject it has been fractured.

THE COURT: He has a more detracted attitude confined to a particular district rather than have a district-wide attitude.

A Exactly, he looks at his constituency which is typically white suburbanite high income, and doesn't see responsibility to concern himself as much with the more pressing problems of older inner-city areas.

THE COURT: That is what this law suit is about; they're saying they're not getting that now, those who complain say they are unable to express an effective voice on behalf of their own needs. What does Mr. Hammer say about that?

A The problem is getting laws passed and the Uni-gov, the metropolitan legislation, has been the subject for thirty years in this community people, session after session, legislators tried to get some form of governmental reform passed; this has been true of both political parties. They haven't succeeded because they couldn't get enough votes to go with them and the problem is not only to have a voice, but to have a voice that is effective and to have a voice that is effective there has to be enough allies to get 51 percent of the vote in each house of the legislature and that I think is where the suggestion that the voice has not been effective is really not well founded and I think it's true that both political parties have sponsored and gotten passed substantial legislation for this community only because they were able to take a delegation over there that supported a particular measure, whether it was Health and Hospital Corporation or something else, but if a delegation goes over with three or four or five people who want something and the others don't I think it's definitely going to fail.

52 Q Mr. Whistler, I will hand you what has been marked for identification as Defendant's Exhibit P and ask you tell the Court what that is?

A This is one of the several work papers, technical work papers that was produced in connection with the Indianapolis Regional Transportation and Development Study, I believe there is a summary of it in evidence. This was the forecast and planning guidelines which gives much of the statistical base upon which the techniques used in preparing the study.

53 Q I will now hand you what has been marked for identification as Defendant's Exhibit Q and ask you to tell the Court what that is?

A This is another one of the technical work papers done by Barton, Ashman and Associates in connection with their performing the producing Indianapolis Regional Transportation and Development Study, this was the land use plan to forecast for 1985 but also including present land use development broken down of course in residential, commercial, industrial, and so forth.

MR. JOHNSON: At this time the defendant will offer into evidence what has been marked as Defendant's Exhibits P and Q.

MR. BEATTY: We have no objection.

THE COURT: They will be received.

54 Q Mr. Whistler, I hold before you what has been marked as Defendant's Exhibit R and ask you if you can tell the Court what that is?

A Yes, that is a map of Marion County upon which is located all of the modern apartment buildings which are integrated in terms of tenants, both having white and non-white tenants, that has occurred since 1964, it does not go back and pick up those that occurred prior to that time.

55 Q That is a definition of a modern apartment building?

A Yes.

56 Q And by whom or what agency was this map prepared?

A It was prepared by the Planning Department staff.

MR. JOHNSON: The defendant will offer into evidence what has been marked for identification as Defendant's Exhibit R.

MR. BEATTY: Could I ask one or two preliminary questions?

THE COURT: I beg your pardon?

MR. BEATTY: May I ask one or two preliminary questions?

THE COURT: Yes you may.

QUESTIONS BY MR. BEATTY

57 Q Mr. Whistler, in designating the various apartments that have been integrated, has any attempt been made to indicate whether or not a single or more family constitutes an integration of the development?

A No, it does not.

58 Q Are you aware of the policy within the community generally apartment owners in this community have developed integration by establishing a quota of one or two families to meet the federal requirements?

A No, I am not aware of any such policy.

59 Q What is the source of the information as to the rates of the persons indicated in each of these, in the outlying districts particularly?

A This information comes in part from the Indiana Civil Rights Commission, I am sure that apart from that the Civil Rights Commission has had quite an aggressive program with the realtors and builders, apartment builders, to promote integration and in part it comes from the Indianapolis Human Rights Commission, but there has been a specific program working on toward apartment integration of which two or three agencies have concentrated in the last two years and that's the source of it.

60 Q Do you have any idea as to the number of non-white families that are actually represented by these newly integrated areas which are outside of what we have described in this particular lawsuit as the Ghetto Area?

A I don't know what boundaries, what area, you are calling the Ghetto Area.

61 Q Well, do you have any idea as to how many families or persons who are represented outside, I am sure you are familiar with these descriptions, Center Township and what you and I know to be the 20th Ward in the city of Indianapolis?

A No, I do not know the number represented outside although obviously from that map it is a very large number of areas, I mean of the apartments that have been integrated, I would judge probably well over half of them are outside the limits you just described.

62 Q But a single family in an apartment unit would constitute an integrated apartment according to your criteria?

A Yes.

MR. BEATTY: We have no objections to this.

THE COURT: It will be received.

MR. JOHNSON: Nothing further on direct, Your Honor.

CROSS EXAMINATION,

QUESTIONS BY MR. JAMES BEATTY

MR. BEATTY: Judge Kerner, my name is James Beatty, I am co-counsel with Mr. Manahan. I have not previously participated in the case. I have appeared before the other two judges on this panel at other times.

63 Q Mr. Whistler, you state previously that there were a certain number of black students at Broad Ripple High School in 1965 was a . . .

A No, I stated my son started, he will be a senior next year, he started in his freshman class there were a 150 to 200 in that freshman class.

64 Q In 1965?

A Well, the fall of '65 or '66. Whatever, you have to do it mathematically.

65 Q Do you have any idea as to the number of black students that were in Broad Ripple the year prior to that?

A Oh there were a few not a substantial number, I could not give the exact figure, when my son started as a freshman it was the first year of the Shortridge Plan so several of the Negro students might have gone to Shortridge otherwise came to Broad Ripple that year and that has been true subsequently.

66 Q What is the Shortridge Plan, how has that affected the distribution of students in the high school system?

A Well, I don't profess to be an expert at all on the Shortridge Plan. It is generally the plan Shortridge High School at 34th and Meridian was to be an academic high school that has minimum entrance levels and any student who does not qualify for those entrance levels and I think or who simply wants to attend a different high school may do so. As a consequence of the combination of those two things has caused a very substantial number of Negro students who would otherwise have attended Shortridge to go to various other high schools in the city, including Broad Ripple.

67 Q Are you familiar with what was roughly the racial balance in Shortridge at the time Shortridge Plan was developed?

A No I don't know.

JUDGE STECKLER: Mr. Beatty, I wonder if you would point out to Judge Kerner the location of Shortridge, I think it would be helpful.

[219, 220]

MR. BEATTY: Shortridge High School is located at 34th and Meridian, which is . . .

JUDGE KERNER: It's on the east side of Meridian?

MR. BEATTY: It's on the east side of Meridian, it's in an area which Mr. Whistler has previously described as having been . . . The reason I'm going into this . . .

68 Q You would not dispute then the figures of the Indianapolis Public Schools have indicated in 1965 in June there were only four black students in Broad Ripple High School?

A I wouldn't dispute it in '65 but I think Shortridge Plan drastically changed circumstances today.

69 Q The Shortridge Plan and not a difference in the movement or mobility of population has caused the Broad Ripple change in racial composition?

A No that is not true, solely true.

70 Q I didn't say solely true, but contributed to the difference, in the more or less dramatic difference that occurred perhaps between June when these figures were prepared and which are in evidence in this case were submitted in the fall when your son began, that wasn't the result of population mobility, it was the result of the Shortridge Plan which was designed to preserve integration at Shortridge?

A It is a combination of the two. I would readily agree with your point that Shortridge Plan has the biggest impact. Our grade school children go to # 84 now have several Negro children going to school with them whose families have simply moved in that area, it's not solely a matter of the Shortridge Plan at all.

71 Q Are you familiar with the racial composition of any other schools in the general area?

A No only from watching children at ball games.

72 Q School # 66 for example which is right on the edge of the Mapleton-Fall Creek area which the study has been introduced here, of racial composition in that school at this time?

A We have some occasion at the Plan Commission from time to time to get statistics about particular schools, I do not know that one.

73 Q Do you have statistics that would show the ratio of black students to white students in the entire Indianapolis Public School system as compared with the general statistics on the population of black to white within the city?

A I do not have, I don't know whether the Plan Commission does or not; I should think the School Board surely has it, but I do not.

74 Q Do you know whether or not the ratio is higher?

A Sir?

75 Q The ratio of students in the Public School system, whether or nct is it not in fact higher than the ratio of the population generally? In other words, aren't there more black students in the Indianapolis School system generally speaking?

A Than percentage of the population?

76 Q Than percentage of the population to white population?

[221, 222]

A I would surmise that's true, we have a substantial parochial school system here which tends to be mostly white, that would be a factor. I can only surmise, I do not know the statistics.

77 Q You testified, that at least in your opinion, that the effectiveness of the Marion County delegation would be diminished in the legislature if the legislators were elected from single-member legislative districts; have you ever been in the legislature?

A No, not as a member.

78 Q Now, people that live in Marion County we all more or less breathe the same air, do we not?

A Yes.

79 Q People in the central city as well as in the suburbs have the same interest in environmental health in that regard?

A Individuals?

80 Q Yes.

A I would say they are drastically different, if a person is in the center city one of the biggest problems is environmental sanitation in the older area, that is where you have abandonment of cars, refrigerators, curbs, and those people in the newer subdivisions don't have those experiences, it's not a matter of daily life and concern. You say they have common interests? Theoretically they do in degree, they are quite different in terms of the immediacy.

81 Q And one of the reasons you determined Unigov would better serve people in the inner city is because they will have single-member districts?

A Yes.

[222-224]

82 Q Would you distinguish for me how that differs in terms or certainty, immediacy of the interest of the people that are involved in making the laws in a local community as distinguished from the legislature?

A The problem in the local community is largely not making the law, it is largely one of allocating the resources of the community in terms of the executive action from the department of government, of determining where these services are going to be performed, where the roads are going to be built, where you are going to have concentrated trash pick-up, things of this sort is competition of one area against another in the administration of the services of government and I contend for each area to have a spokesman would tend to be beneficial to each of the areas that has spoken and in consequence I think generally beneficial to the community at large.

83 Q The legislature also allocates resources of the state of Indiana for education do they not?

A They allocate on the basis generally of a county, the legislature couldn't possibly take care of the trash problems of inner city of Indianapolis, it can pass a law for the county or for the city, if it passes it would not be constitutional, I think you will agree, because it has to have legislation generally on some classification basis and a city by classification is about as small as we have attempted to try to support through legislative action. I'm saying it's the empowering agency, but it couldn't solve the neighborhood problem, it's got to give empowering legislation on the countywide basis.

[224, 225]

84 Q Have you had an opportunity to examine the charts that have been introduced in this case showing where the legislators live who have actually been elected in this county over the past ten years?

A No, I haven't seen it.

85 Q I think that the evidence will show that Washington Township, which has, according to the 1960 census, ten percent of this county, has elected fifteen percent of the representatives in the House and the Senate, conversely Center Township with 47 percent of the population has elected approximately 16 percent of the representatives to the legislature. Now it's your suggestion that people from Washington Township are really going to be more responsible to the people of Center Township than the people who live there and are confronted with the immediacy of these problems in terms of setting up allocation of state resources, setting up the kind of governmental units whether it be for Airport Authority, sanitation facilities, education, Health and Hospital Corporation, park development?

A The answer is yes, and it's yes for twofold reasons; that a legislator who is elected on the county-wide constituency has to support positions and takes a position which makes him acceptable to the majority of the people of the constituency, including those residents in the inner city. So he has to occupy, if you will, something of a middle, more a middle of the road position but one which recognizes that part of his constituency is Center Township which you just said a majority of his constituency is Center Township. I think what you have if you elect a single-member representative from Center Township it may indeed be that that spokesman would say and stand for things which were more nearly exactly what his constituents wanted him to stand for and it is my contention they would never get it passed by the legislature because he would be a very small voice and would in effect be outnumbered by his own delegation or something close to it, he would have a small voice that would not make it possible for him to sell his viewpoint in the legislative processes.

86 Q Let's take a particular example for a moment to test that thoroughly. As you well know for a period of some twenty some years now much of the help has come, to alleviate urban decay and problems has come from the federal level, as you well also know I believe 91 out of 92 counties in the state of Indiana were authorized to accept federal funds and only one county was not so authorized; in repeated legislatures not only was enabling legislation enacted but resolutions were passed to the effect that no federal aid should be accepted in this county for any purpose, we lost very substantial funds in flood control for example. In 1964 a substantial number of people in the inner city, the largest proportion that at any time have been elected during this entire period of time, were elected to the legislature, as a result of that, that particular law was amended so that fortunately you have now got the funds to fund things like a code enforcement program for which I thank you since I live in that particular area, but doesn't that contradict precisely what you are saying, the fact is the suburban residents were not responsive in this particular area, the most critical area in which

we could seek allocation of national or local resources to the needs of this community?

MR. JOHNSON: Is that the finish of the . . . I would object to that question, Your Honor, and I have been sitting here for quite some time, this is more argumentative than cross examination.

THE COURT: Objection sustained. Please I know it's difficult, we have had the problem previously, to try to maintain the proper order of question and answer and we get into philosophical discussions which I think might properly belong in the argument than in a question.

MR. BEATTY: The only reason I went into that is we though it was quite liberal to let him enter opinions.

THE COURT: I think the three judge court would want to but I think we must have some proper order of rules and operation. It was quite a prologue I would say.

MR. BEATTY: If I may, may I ask if the statement I made was correct?

A I have to remember the statement.

THE COURT: I think a more or less historical review.

A The statement as to the historical past I think was correct, but I would feel I ought to be entitled to respond by saying political philosophies change, organizations change, as you know the viewpoint that was represented by the people who had denied federal aid to this community was the result of a bit of an upheaval of political organization you would hold responsible for.

87 Q Well, perhaps other things I have should be held for argument. In any event I would like to ask a couple of questions and I do not just ask this for the purpose of being argumentative. Have any studies been made of the Lockfield area in which the riots occurred a couple of weeks ago?

A Lockfield is on the perimeter of the University Quarter and as you know the area has been purchased for the University. There have been many studies made in connection with the development of the University facilities, a lot of work done with Indiana University in terms of picking out Lockfield Gardens not the apartments by itself, I think not, I am not aware of any specific study focused on that area just in development alone.

MR. BEATTY: I have no further questions of the witness.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. RICHARD C. JOHNSON

88 Q I just have a couple of fast questions on re-direct. As long as we are talking about specific examples of legislature, are you familiar with House Bill No. 305 of the 1969 General Assembly commonly known as the Junk Car Bill?

A Only, I'm only generally familiar.

89 Q Do you know who sponsored that?

A I am sorry I do not.

THE COURT: Do you want to volunteer I think it's probably on the House Bill.

MR. JOHNSON: It's probably in evidence, I'm not sure if it is or not.

90 Q Would you know if Mr. Danny Burton sponsored that Bill?

A I do not.

91 Q Do you know the residence of Mr. Burton, have any idea where he lives?

A Yes, Mr. Burton lives in Warren Township on the east side of the community I believe.

92 Q Do you know in general what the bill provides for?

A Other than making it easier procedure to get rid of junk cars that have been abandoned.

93 Q Where are the junk cars located?

A The greatest number, of course, in the older inner city of perhaps say within two, two and a half, three miles of the Circle.

94 Q One final question, you have alluded to the University Quarter in your testimony on cross examination, can you tell the Court what that study is and what the purpose of it was?

A Yes, the University Quarter represents an area from the Statehouse on the westside side, center of town, all the way over to White River, it must be a mile and a half or more and several blocks north to south that was a residential area in 1960, up until '63 or '64 I believe, it was purchased through combined efforts of Indiana University and Indianapolis Redevelopment Commission. It has been totally cleared now, at the moment there are some University buildings including a new law school being constructed there, much of the area at this point is undeveloped, unredeveloped I suppose you should say, . . .

[230, 231]

THE COURT: (Interposing) There has been no peoples' parking up there?

A (Continuing) No, but the planning has been in connection with working out the reuse of the property including road patterns, University facilities, many University-related type facilities, but the end result has been of course a very substantial movement of people away from there.

95 Q Do you have an opinion as to whether that could have been accomplished if single-member districting had been in effect at that time?

A Oh, I think it would have been very difficult to do it, without the existence of the Redevelopment Commission Act, it's a very sensitive subject without the statute.

MR. JOHNSON: Nothing further.

JUDGE NOLAND: I would like to inquire how long you have been on the Metropolitan Plan Commission?

A Since January of 1968.

JUDGE NOLAND: You have been president since then?

A Since then, the original . . .

JUDGE NOLAND: How do you become a member?

A I was appointed by the Mayor, there are nine members on the Commission, some are appointed by the Mayor, some by the City Council, some by the Commissioners, I happened to be the Mayor's appointment.

[231, 232]

JUDGE NOLAND: This is mayor Lugar?

A Yes.

THE COURT: Thank you very much.

(Witness excused)

MR. JOHNSON: We have one additional witness who will take a very short time.

GEORGE COMFORT, a witness called by defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. KENT FRANDSEN

1 Q Will you state your name and address please, Dr. Comfort, and spell your last name please?

A George Comfort, C-o-m-f-o-r-t, I live at 6105 North Meridian.

2 Q Would you please tell the Court your place of employment?

A I am employed at Butler University.

3 Q In what capacity?

A Professor of political science.

4 Q What is your educational background?

A I have an A.B. degree from Western Michigan University, a Master's Degree from the University of Michigan, Doctor of Philosophy degree from the University of Kentucky and have attended the University of Wisconsin.

5 Q Are you a resident of Marion County?

A Yes.

6 Q In Indianapolis?

A Yes.

7 Q How long have you been a resident?

A Since 1949.

8 Q Have you authored subjects in your area of expertise?

A Yes, I am the author of two books in the field of government, and a number of articles, and contributed a chapter to some other textbooks.

9 Q Are you familiar with the issues before the Court today?

A Yes.

10 Q Do you have an opinion on the issue of multimember districts as opposed to single-member districts?

A Yes.

11 Q Have you prepared a statement at my request to present to the Court?

A I did.

12 Q I now hand you what has been identified as Defendant's Exhibit S, or designated as Defendant's Exhibit S, can you identify that?

A Yes, this is a statement that I prepared at your request.

13 Q Would you please read the statement to the Court?

MR. MANAHAN: To which we object. He can testify in response to the question, reading a statement to the Court which was prepared in contemplation of litigation is a device to bypass the rules of evidence and rules of testimony.

THE COURT: Objection sustained.

14 Q Dr. Comfort, does this statement that has been prepared reflect your opinion on the question that I propounded to you?

A Yes.

MR. FRANDSEN: I will withdraw that.

THE COURT: May I suggest you let Counsel see a copy of it, he may agree or disagree.

MR. MANAHAN: We are objecting to that, to reading the statement in.

15 Q All right. We will withdraw the questioned introduced statement. Dr. Comfort, would you please express your opinion on the question of whether a person representing a geographic unit has assurance that all people within the geographic unit share his views?

A I don't believe I understand your question.

16 Q Let me rephrase that, withdraw that question. In multi-member districts is it conceivable that people who live in certain units of the county may find representatives or candidates who share their precise political views outside of a narrow geographic district?

A Oh, I would see no reason why not, in an area no larger than Marion County where problems are common, I would suppose that just because one lives on another side of the street which happens to be a dividing line between two districts doesn't mean he couldn't represent the people in other parts of the county.

17 Q Within any conceivable or infinite variety of districts that this county or any other county might be divided is there any assurance or is there any historical support for the fact that the people residing within that geographical unit or district however slight have a unanimity of use, political, social, and economic?

A It's my opinion, sir, that the problems in a metropolitan area such as Marion County is are problems which are common, I mean problems of better schools, better transportation, better police protection, these cannot be identified as to little individual districts of ten or fifteen square blocks, these become common problems and I think things that have to be solved on a broad scale. There's no way to approach these things from a little individual geographic area point of view if you are going to have the solution to the problem; it's going to be a broad solution.

18 Q In your opinion is a person who may have a minority view of a specific question more apt to find an elected or potential elected candidate from a district in which he can select fifteen candidates as opposed to finding a potential candidate within his small geographical district?

A Well, it seems to me if we are speaking of minority points of view now and I think we can be very, very specific here and talk about the Negro. The Negro at the present time in a multi-member district has a voice and I think it is a substantial voice in the selection of fifteen members. I think both political parties have to take the potency of the Negro vote into account and they do, and I think this is proven by the fact there are presently three Negro representatives from Marion County in the House. The parties and the candidates themselves in campaigning and establishing their policies have to take into account they must appeal to Negro voters to win. Now if you divided this into fifteen districts and certainly the Negroes are going to be sure of electing some representatives from some districts that are going to have no voice, no influence in electing the eleven or twelve or whatever the remaining ones might be from the all white districts. It seems to me, it is my opinion at least, the Negroes are going to lose by this and lose rather substantially.

MR. FRANDSEN: I have no further questions.

JUDGE STECKLER: In your opinion the non-white would be worsened or bettered?

A I think they would have less influence in the voice of the Marion County delegation under single-member districts than they do now. They would have, I don't know how many they would have, I haven't seen any calculation maps, I don't know how the districts are to be drawn up, but they would elect perhaps three or four and the other eleven or twelve would be from all-white districts candidates from which he would have little concern with and perhaps no interest in the problem of the Negro.

JUDGE STECKLER: Do you think your answer would be altered if the districts, for example Marion County, were broken into five districts with three representatives from each district as is done in some instances, would this weaken his voice?

A I still think it would weaken his voice somewhat, sir, than it would now. Knowing the experiences I have had with political parties and their slating, I know that they slate candidates taking into account they must attract some Negro votes. I think the Negro representing some twenty or more percent of the electorate in this county does have a significant voice in all fifteen of the candidates now.

CROSS EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

19 Q Is it your testimony, sir, as the expert witness for the State of Indiana that the residents of Marion County gain an advantage by multi-member districting and having these a bloc vote of fifteen representatives and eight senators in the Indiana General Assembly?

A I think it's quite essential if we are going to think in terms of this being a metropolitan area, metropolitan problems . . .

20 Q Excuse me, that is not my question; I ask you if it is an advantage a voting bloc advantage to them?

A It certainly is an advantage and I was about to tell you why I thought it was an advantage, you don't want my reasons why it is an advantage?

21 Q Well, our complaint alleges it is, that is why I didn't seek anything further. Would it be an ad-

vantage over other parts of the state, say the single-member districts immediately outside Marion County?

A I think for Marion County to go to the legislature with a single voice of fifteen representatives is a significant advantage.

22 Q Over the single-member districts immediately outside Marion County as well as other possible districts?

A I'm not thinking of it in a comparitive sense, I'm thinking of the fact Marion County must go there, there is no home rule for local units in the state, you know that. You know if Marion County is to get some policy, is to get it from the state legislature, the state legislature must know what Marion County needs and what Marion County wants before it can pass policy.

23 Q By policy is it an advantage over places outside Marion County in your opinion for Marion County to have this bloc voting situation in the Indiana General Assembly?

A I can't answer that I don't know what you mean.

24 Q Is it advantageous, is it, does it enhance the voting power of Marion County voters to have their assemblymen elected in multi-member districts at large, such enhancement meaning to increase the power and force of their representation in the Indiana General Assembly?

A Certainly in matters that come before the General Assembly which affect Marion County, yes I think it would be an advantage.

25 Q Why would you limit that only to matters which affect Marion County?

A But I think those would be the subjects upon which this united voice for Marion County would be raised, it wouldn't be united on other matters.

26 Q But if it were united on voice on other matters, if this united voice were raised on other matters would your generalization apply to these other matters?

A I can't answer a hypothetical question because I think the strength of the united voice for Marion County is a concern on a subject which deals with Marion County.

27 Q Now we have spoken of Marion County and we have spoken of the Indianapolis Metropolitan area, are those two things coterminous?

A Marion County and the metropolitan area coterminous?

28 Q Yes.

A Or nearly so, except the metropolitan area is larger than Marion County, it spreads over into some of the neighboring counties.

29 Q For example?

A Hamilton, I suppose Johnson, suburban areas come into Marion County are part of the metropolitan area, but don't live inside of the county.

30 Q Is the drawing of the Marion County line, does it not go back more than one hundred years?

A Well, I don't think so, I don't know when the counties were drawn, I suppose when we came into the union in 1916, or in 1816, I don't know whether Marion County was drawn then or not, I suppose it was.

31 Q But to your knowledge was the Marion County line ever drawn for purposes of encompassing the metropolitan area or defining?

A There were no metropolitan areas, I suppose were not even contemplated in 1816.

32 Q So if the multi-member districting of Marion County in any way rationally existed to the metropolitan area in the central part of the state?

A It is in the sense it has a population drawn, that's what made it a metropolitan area. It has been made a metropolitan area, we have more representatives allocated to us.

33 Q Has the county line had anything to do with the scope and direction of this population growth?

A No, the county line is arbitrary.

MR. MANAHAN: No further questions.

MR. FRIEDSEN: We have no further questions.

THE COURT: Thank you, Doctor.

The witness excused.

MR. JOHNSON: At this time the defendant will rest.

THE COURT: Yes. Before you . . . Mr. Byrum, I always seem to be concerned about you, because you tried so hard to get in it and you tried so hard to stay in this I want to be sure the record shows we gave you every opportunity to produce any evidence that you wish. Do you wish to produce any at this time before closing defendant's case?

MR. BYRUM: Your Honor, at this time we renew our motion for a continuance on the grounds that we haven't had adequate time to prepare.

THE COURT: Of course, you know we have passed upon that motion.

MR. BYRUM: I understand that, I am renewing the motion on the basis I have not had the time to prepare, simply to renew that motion and to show the Court I am unable to offer any evidence at this time because I haven't been able to prepare it good. I will say this, however, that I believe if I were given a reasonable length of time to prepare some evidence I could show figures from the utilities company, the water companies, the Power and Light Companies, Indianapolis Bell Telephone Company to show population trends to indicate to the Court how inaccurate and inprecise the 1960 census figures are today that they do not give the Court any guideline whatever.

THE COURT: I think we can all take judicial notice of that fact, and I would quite agree with your statement. For the first time since you have been in on any statement you have made, but I would be careful about just leaving it at that point. Do you have anything better to propose in its place; I mean something of an official nature, if you have it I assure you that we say, I think I speak for the members of the Court, we would appreciate having any better figures since the 1960 census, if they are of that category upon which we could rely.

MR. BYRUM: I do not have any such evidence today, Your Honor, I feel however with time I could develop such facts.

THE COURT: I am sure we all could if we waited until August, 1970 after the census is underway. Let the record show I have conferred with the members of the Court and the motion to continue is denied.

MR. BYRUM: Thank you, Your Honor.

MR. MANAHAN: For a very brief rebuttal, Your Honor, we call Mr. Schreiber.

MR. JOHNSON: Excuse me, Your Honor. There were two Articles in the Indiana Constitution of which I would like to ask the Court for leave to take notice before closing, if I reopen the case for that purpose and that purpose alone, I would appreciate it.

THE COURT: Surely.

MR. JOHNSON: They are Article 4 Section VI of the Indiana Constitution which says that the Indiana Senate shall not be districted except on a county-wide basis and Article 4 Section IX of the Indiana Constitution which says that it is within the discretion of the Governor to call a special session of the legislature.

THE COURT Thank you very much.

The Defendant having rested, the Plaintiffs offered the following evidence in rebuttal:

WILLIAM SCHREIBER, a witness called by Plaintiffs, testified as follows:

QUESTIONS BY MR. JAMES MANAHAN

1 Q State your name?

A William Matthew Schreiber.

2 Q Are you the same Mr. Schreiber that has testified previously?

A I am.

3 Q I show you Exhibit 71 of Plaintiffs' and ask you what that is?

A It is a map of Marion County with red dots indicating the addresses from which state senators and state representatives are elected from and representing the Marion County line.

4 Q During what period of time?

A 1960 to 1968.

5 Q Is this then a composite . . .

THE COURT: Could I interupt you? You started out like gangbusters and I didn't get your exhibit number.

MR. MANAHAN: 71, Your Honor.

6 Q Is Exhibit 71 then a composite drawing by you of the other ten exhibits showing the residences of representatives and senators in Marion County over the past decade?

A That would be correct.

MR. MANAHAN: We offer Exhibit 71.

MR. JOHNSON: We will object to Exhibit 71 on the basis it includes historical data prior to 1965.

THE COURT: You are objecting on the same basis you objected to all previous exhibits prior to '65?

MR. JOHNSON: That is correct.

THE COURT: Same ruling is made.

7 Q I will show you the Defendant's Exhibit numbered M and the map number 1 which is Crown Hill neighborhood and I will ask you to step to the chart and locate the area outlined there on that chart. Stand so the Court can see after you have figured it out?

A This area . . .

8 Q Are you pointing to that area?

A It's this area to the east, southeast and the south of this green trapezoid, it would be known on the other map as the 5th Ward.

9 Q That will be immediately south then of those six red dots above number 21 on the map?

A It would be south of that, yes.

10 Q Immediately south?

A Yes.

THE COURT: I would like to inquire, does each one of the red dots represent a different individual or do some of the red dots represent the same individual? I notice three down in the lower part of the map there, well, the northern border, Perry Township, is that one person?

THE WITNESS: That is one person elected three times filling three vacancies.

11 Q And did that person move across the street resulting in his township change during one of the transitions?

A Yes, he did.

12 Q I will show you Defendant's Exhibit L, the page immediately following page ten but not numbered and the map thereon with the words Mapleton-Fall Creek Land Use Plan, I will ask you to point out that area.

A This area here (indicating) south of 38th Street, north of Fall Creek, and east of Meridian.

13 Q And I will hand you Defendant's Exhibit N and ask—I show you Map 2 which appears on the page immediately before the page with the number 9 and has the words Metropolitan Indianapolis Study Area Location and I will ask you to point out the large map the ground area designated Highland-Brookside?

A This area (indicating) roughly down Sherman Drive railroad tracks, down to the railroad south of Washington Street, I think it's the Balitmore and Ohio, or was at one time, we turn there, the railroad line to Martindale goes on back up to Massachusetts northeast on Massachusetts.

14 Q That would encompass two red dots to the immediate west of the four red dots?

A Yes.

[247, 248]

15 Q One further question. Can you give us the—no further questions.

MR. MANAHAN: I have no further questions.

CROSS EXAMINATION,

QUESTIONS BY MR. RICHARD C JOHNSON

16 Q Mr. Schreiber, are you familiar with the area delineated by the complaint as the Ghetto voting area?

A Yes, I am.

17 Q Now, out of the three sub-area studies to which you refer how many of those three lie within the Ghetto area?

A The Crown Hill neighborhood is completely within, I think, what is described as the Ghetto area, the vast majority of the Mapleton-Fall Creek area, I think may be without the area, I would have to see the map of the Ghetto area that I drew to recall, census tracts are a bit confusing. May I see . . .

MR. MANAHAN: May he see the map?

MR. JOHNSON: Certainly, anything that will help him.

A I'm sorry, about 60 percent of the Mapleton-Fall Creek area, the southern 60 percent of that area is within the Ghetto area, as described in the complaint and very little or no part of the final area, the Brookside-Highland area, is within the Ghetto Area, as described in the complaint.

18 Q How about the third study?

A No, this is it, I said very little or none of it would be within the Ghetto Area.

19 Q The third is completely without?

A I don't know that it's completely without, I think it is primarily without.

20 Q All right. Good.

MR. JOHNSON: Nothing further, Your Honor.

RE-DIRECT EXAMINATION,

QUESTIONS BY MR. JAMES MANAHAN

21 Q Is that the 1960 Ghetto Area drawn on the map?

A It's taken from the 1960 figures, yes.

22 Q And not the 1967 Ghetto voting area?

A That is correct.

THE COURT: Mr. Manahan, the map being used by the witness, is it or is it not in evidence?

MR. MANAHAN: I am offering it. I offer it in evidence. Let the record show the map referred to is premarked No. 72.

MR. JOHNSON: May I ask permission of the Court to inquire preliminarily?

THE COURT: Yes.

QUESTIONS BY MR. JOHNSON

23 Q Who prepared this map?

A I did.

24 Q And from what statistics did you use in its preparation?

A I prepared that from the complaint.

MR. JOHNSON: Defendant will object to the introduction of Exhibit 72 at this time as more properly having been required to be introduced as a part of the Plaintiffs' case in chief and not as a part of his case in rebuttal.

THE COURT: May I iequire what this map is suppose to illustrate?

MR. MANAHAN: It illustrates what the complaint defines as the 1960 Ghetto Area, it contains lines showing the townships of Marion County, red lines and a green line showing the outer boundaries of the 1960 Ghetto Area alleged in the complaint in relation to ....

THE COURT: The complaint outlines this area geographically by street I suppose?

MR. MANAHAN: Yes.

THE COURT: In relation to what is designated the Ghetto Area of the '60 census?

MR. MANAHAN: And census tract.

THE COURT: I will be admitted for that purpose only.

25 Q How long have you lived in Indianapolis, Mr. Schreiber?

A Since 1949.

26 Q Are you acquainted with the three neighborhoods referred to in the exhibits you have been shown, Exhibits L, N, and M?

A Yes.

27 Q Are they neighborhoods which have racial change in the housing?

A Yes.

28 Q Is this integrated or a black belt movement in this change?

A Black belt movement.

MR. MANAHAN: No further questions.

MR. JOHNSON: Nothing further.

THE COURT: I presume at this point unless someone indicates at this time the case in chief for Plaintiffs' and Defendant and Intervening Defendants' have been concluded. This is the close of all evidence and as I previously stated one hour a side will be set aside for argument for both sides, use it as you wish. We will just keep time of one hour. In that case we will recess. I have no doubt you wish to do some preparation besides getting nourishment. We shall reconvene at 2:30 unless you feel you could be ready by 2:00. I am doing this more for your convenience than the Court. Would 2:30 be better for your preparation.

MR. MANAHAN: Yes.

THE COURT: The Court will reconvene at 2:30.

(The Court recessed at 1250 P.M., reconvened at 2:35 P.M., for hearing of oral argument of counsel)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK CHAVIS, et al., *Plaintiffs* vs. EDGAR D. WHITCOMB, Governor of the State of Indiana *Defendant* and JOHN C. RUCKELSHAUS, et al., *Intervening Defendants*	NO. IP 69-C-23

July 28, 1969

Before KERNER, Circuit Judge, and STECKLER and NOLAND, District Judges.

ORDER

July 28, 1969

The above-entitled cause came before the three-judge court for trial on the plaintiffs' complaint, the defendant's answer, and the complaint of intervention and answer of intervenors. The Court having heard and considered the evidence and the oral arguments of counsel, and having considered the briefs of the parties, now files simultaneously with this Order its written Opinion in which the Court's findings of fact and conclusions of law appear.

From the evidence and the law, the Court finds and concludes that the multi-member districting provisions of the present legislative apportionment statutes of Indiana,

Indiana Acts of 1965 (2d Spec. Sess.), ch. 5, sec. 3 and ch. 4, sec. 3 (Ind. Ann. Stat. §§ 34-102, 34-104 (Burns Supp. 1968)), as they relate to Marion County, operate to minimize and cancel out the voting strength of a cognizable racial minority group residing in the Center Township Ghetto, as such ghetto is defined and delineated in the Court's written Opinion, to the extent that the members of such minority group are deprived of equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States. Under the evidence before the Court such invidious effects will continue so long as Marion County is apportioned into large senate and house multi-member districts. Hence, those portions of the present legislative apportionment statutes relating to Marion County, as to both the Senate and the House of the General Assembly, are unconstitutional and void. The Court finds that the only practicable remedy for such unconstitutional deprivation of voting strength is the elimination of the large multi-member house and senate districts in Marion County.

From the evidence adduced in this case, to redistrict Marion County alone, to provide single-member districts or any other type of districts meeting constitutional standards, would leave impermissible population variations between the new Marion County districts and other districts in the State.

Independent of the impermissible population variations that would exist between new Marion County districts and other districts in the State, impermissible population variations would remain between existing districts in the State when compared among themselves. Therefore, a redistricting of the entire State as to both houses of the General Assembly is necessitated.

While recognizing the right of the injured plaintiffs to have their constitutional rights vindicated at the earliest practicable time, the Court must also recognize that the federal judiciary function within a system of federalism which entrusts the responsibility of legislative apportionment and redistricting primarily to the state legislature. The Court must therefore afford Governor Edgar D. Whitcomb a reasonable opportunity to call a Special Session of the General Assembly of the State of Indiana so that it may enact legislation to redistrict the State of Indiana and reapportion the legislative seats in the General Assembly in accordance with federal constitutional requirements and in compliance with this Court's opinion.

An injunction will not issue at this time and the State will be given until October 1, 1969, to enact statutes redistricting the State and reapportioning the legislative seats in the General Assembly to remedy the improper districting and malapportionment found to exist as pointed out in the Court's opinion.

This cutoff date is one by which there would to be filed with the Court an enactment approved by both houses of the Indiana General Assembly and signed into law by the Governor.

The Court will retain jurisdiction in these proceedings pending the period granted the State within which to act and for such additional time as may be necessary to effectuate an adequate remedy to those to whom relief is due. Because of the relative proximity in time of the initial filing date for candidates for the next primary election for members of the Indiana General Assembly [February 24, 1970], no final judgment will issue without an adequate apportionment plan being approved and/or promulgated therein.

IT IS SO ORDERED.

/s/ Otto Kerner
Judge
United States Court of Appeals
for the Seventh Circuit

/s/ William E. Steckler
Judge
United States District Court

/s/ James E. Noland
Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK CHAVIS, et al.,
Plaintiffs

vs.

EDGAR D. WHITCOMB, Governor
of the State of Indiana
Defendant

and

JOHN C. RUCKELSHAUS, et al.,
Intervening Defendants

NO. IP 69-C-23

July 28, 1969

Before KERNER, Circuit Judge, and STECKLER and NOLAND, District Judges.

OPINION

By Judges Kerner, Steckler, and Noland:

This suit was tried before a three-judge court of the Southern District of Indiana, constituted under 28 U.S.C. § 2281 in that the complaint prays that certain statutes of the State of Indiana, having state-wide effect,[1] be declared violative of the Constitution of the United States. Jurisdiction is predicated upon 28 U.S.C. § 1343. The complaint seeks declaratory relief pursuant to 28 U.S.C. § 2201 and injunctive relief would necessarily accompany a judgment adverse to defendants.

The action was commenced against the Indiana General Assembly and its individual members. By order of March 18, 1969, the Court granted the plaintiffs' motion to join Edgar D. Whitcomb, as Governor of the State of Indiana.

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[1] See this Court's Opinion and Order of June 18, 1969, — F. Supp. — (S.D. Ind. 1969).

By further order of May 12, 1969, the Court granted defendants' motion to dismiss as to the Indiana General Assembly and its individual members.

The complaint purports to state a class action; each plaintiff sues in his own behalf and in behalf of the class or classes he is alleged to represent. By order of June 18, 1969, the Court determined that this was not properly a class action but that the plaintiffs could maintain the action individually.[2] Also by order of June 18, 1969, the Court granted the petition of certain intervening defendants for leave to intervene nunc pro tunc June 12, 1969, pursuant to Rule 24(b)(2), Fed. R. Civ. P.

The parties agree that the bicameral Indiana General Assembly consists of a House of Representatives of one hundred members, and a Senate of fifty members,[3] elected from districts, and that under the Indiana Acts of 1965 (2d Spec. Sess.), ch. 5, sec. 3, p. 18 and ch. 4, sec. 3, p. 15,[4] Marion County, Indiana, which includes the City of Indianapolis, comprises the Twenty-sixth District of the House and the Nineteenth District of the Senate. Under these statutes fifteen representatives and eight senators are apportioned to and elected at large from Marion County. The plaintiffs assert that these statutes operate to violate their rights under the Equal Protection Clause of the Constitution of the United States.

THE COMPLAINT

Each of the plaintiffs is described by the complaint; allegations of fact relating specifically to the individual plaintiffs are then made. Each plaintiff sues in his own behalf and in behalf of persons similarly situated.

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[2] See Court's separate Order of June 18, 1969, — F. Supp. — (S.D. Ind. 1969).

[3] These numbers of legislators are the maximum permissible under the Constitution of the State of Indiana, Art. 4, sec. 2.

[4] Otherwise published as Ind. Ann. Stat. §§ 34-102, 34-104, (Burns Supp. 1968).

Plaintiff Patrick Chavis is described as a resident and voter of Indiana. Though a Negro, he lives outside the 1960 and 1967 Ghetto Areas described in the complaint, residing in an area where Negroes are unlikely ever to gather in sufficient number to be able to exercise a voting bloc influence over the election of any candidate to any public office. Therefore, he alleges that he has an active interest in protecting the voting rights of the inhabitants of the described Ghetto Area whose interests and voting propensities approximate his own.

Plaintiffs Andrew Ramsey and Mason Bryant are described as Negro-Americans who are residents and voters of Marion County, Indiana, residing in the 1967 Ghetto Area described in the complaint. They are alleged to be part of a cognizable interest group which regularly engages in bloc voting but whose bloc voting is cancelled out by the voting of contrary interest groups in Marion County-wide elections. These plaintiffs allege that their vote is invidiously diluted in Indiana General Assembly elections by multi-member districting at large of General Assembly seats in Marion County.

Plaintiff Marilyn Hotz is described as a White-American, a resident of Marion County outside the City of Indianapolis, and a Republican by party preference. She alleges that persons living in Marion County outside the city include less than one-third of the population of Marion County but almost one-half of the regular Republican voters of the county. She further alleges that such residents are deprived of a proportionate voice as to who their Republican state legislators shall be, in years of Republican victory in Marion County.

Plaintiff Rowland Allen is described as an American citizen and a resident and voter of Marion County who is an independent voter. He alleges that he seeks to vote for the individual candidate rather than the political party, but that he is frustrated in this effort because of the large number of candidates presented by each party.

Plaintiff William Walker is described as a Negro resident and voter of Lake County, Indiana. He alleges that Lake County contains about the same number of Negroes as does Marion County but that Lake County Negroes have the opportunity to influence the election of only five-eighths as many senators and eleven-fifteenths as many representatives as do Marion County Negroes in General Assembly elections. He alleges that his vote is mathematically diluted because of the multi-member districting of Marion County.

In a separate paragraph of the complaint, the plaintiffs Chavis, Ramsey, and Bryant allege that the present legislative apportionment and districting statutes of Indiana are unconscionably detrimental to the force and effect of the vote of Negroes and poor persons living in Marion County. They further allege the existence of a geographical 1967 Ghetto Area having demographic characteristics which cause it to contain a cognizable minority interest group, and the existence of a Ghetto Voting Area whose boundaries closely coincide with those of the Ghetto Area. Because of its cognizable minority characteristics, the Ghetto Area is alleged to have an unusual interest in specific areas of substantive law.

The Ghetto Area is alleged to exist involuntarily because of the segregation of racial minority groups and persons of low income.

These plaintiffs claim that under single-member districting the two described Ghetto Areas would control the nomination and election of three representatives and of one senator, but that [ghetto voters have no] force or control over legislators under the present districting scheme because the effect of their vote is cancelled out by other contrary interest groups in Marion County.

It is further alleged that the Democratic Party organization, particularly the County Chairman, has substantial control over the nomination of prospective state legislators in Marion County primary elections, through sponsorship of a slate of candidates. This slate is seldom defeated. Plaintiffs allege that this control exists because multi-member districting causes the number of candidates to be so large that they cannot become individually known to even the most conscientious and discerning voter.

Plaintiff William Walker, Jr. alleges that multi-member districting gives certain inhabitants and voters in a larger multi-member district a mathematically unconscionable advantage over him. He alleges that Lake County is second only to Marion County in number of inhabitants, that it is almost equal to Marion County in number of Negro inhabitants, and that if single-member districting prevailed in both counties, Lake County would elect as many "Negro rights-conscious" legislators to the General Assembly as would Marion County. Both counties are alleged to have a sufficient number of Negro voters and inhabitants for a bloc vote by said inhabitants to change the result of any election recently held.

He alleges that Lake County is a multi-member at large district for purposes of electing legislators, and that in the number of its inhabitants and of legislators Lake County is about three-fourths the size of Marion County. The four to three ratio of inhabitants and voters will continue to result in a four to three apportionment ratio of legislators between the two counties, but this four to three ratio on a multi-member district basis in Marion County will result in an invidious dilution of the Lake County Negro vote and voter influence with respect to the General Assembly.

In support of his conclusion plaintiff Walker alleges that voter influence does not decrease in a direct inverse ratio with the population or voter population of a district because the rules of mathematics inject a square root factor into the denominator of the said equation and fraction. Because of this, the vote of each Lake County voter effects the election of only three-fourths as many legislators as the vote of each Marion County voter, but the probability of a typical Marion County voter's having an opportunity to effect the result of an individual legislator's conduct will not be an inverse three-fourths to that of the Lake County voter; rather it will be about 86.80% that of a Lake County voter.

Plaintiff Walker alleges that because of the square root factor it is mathematically impossible to achieve a truly equitable apportionment among multi-member legislative districts of different sizes. It is further alleged that there is competition between the Negro population of Lake County and the Negro population of Marion County to capitalize upon the general concern among the general public and its legislators to overcome injustices perpetrated upon racial minorities, and that Marion County Negroes enjoy an unconscionable advantage, diluting the voting power of Lake County Negroes.

In effect, the portions of the complaint relating specifically to plaintiffs Chavis, Ramsey, and Bryant allege that the result of electing Marion County's legislators at large is to dilute the vote of a cognizable minority group in violation of the Constitution of the United States.

All six plaintiffs seek a declaration that the at large provisions of the Indiana Acts of 1965 (2d Spec. Sess.) ch. 4, sec. 3, p. 15 and ch. 5, sec. 3, p. 18, are unconstitutional in so far as they apply to Marion County and an order directing a proper legislative apportionment in Marion County.

We find that those allegations of the complaint pertaining to a cognizable interest group consisting of Negroes residing in the "Center Township Ghetto" in Marion County, as that term and the area embraced are defined and delineated later in this opinion, have been proven by a preponderance of the evidence; that the election of legislators at large from Marion County effects an unjustifiable minimization of the voting power of this sizeable and cognizable minority group, and that members of the group, including the plaintiff Mason Bryant, have thus been invidiously discriminated against in contravention of the Equal Protection Clause of the United States Constitution. The remedy which we believe to be appropriate at this time is stated *infra.*

THE TEST TO BE APPLIED

Plaintiffs rely somewhat on dictum of *Lucas v. Colorado General Assembly,* 377 U.S. 713, 731, 84 S.Ct. 1459, 1471, 12 L.Ed. 2d 632 (1964), discussing possible undesirable features of multi-member districting. However, that decision is inapposite in that it did not intimate that such districts are constitutionally defective. See Footnote 21 to *Lucas.*

The first case to come before the Supreme Court specifically raising an issue of the constitutionality of a multi-member districting scheme was *Fortson v. Dorsey,* 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed. 2d 401 (1965). There, under Georgia's 1962 Senatorial Reapportionment Act the state was divided into senatorial districts that were conceded to be substantially equal in population. Except for the seven most populous counties in the state, from one to eight counties comprised a district and the voters therein, on a district-wide basis, elected the senator for that district. The seven most populous counties were divided into from two to seven districts each and the voters in each such county, instead of electing only one senator from the district in which they resided, elected, on a county-wide basis, the number of senators that the county had districts. The plaintiffs, registered voters in multi-district counties, brought action in the Federal District Court seeking a decree that the county-wide voting requirement in the seven multi-district counties violated the Equal Protection Clause of the Fourteenth Amendment. The three-judge District Court granted their motion for summary judgment, holding that the difference between electing senators in districts comprising a county or group of counties and in multi-district counties constituted an "invidious discrimination tested by any standard." *Dorsey v. Fortson*, 228 F. Supp. 259 at 263 (N.D. Ga. 1964. The Supreme Court reversed, holding that a multi-member legislative district was not per se violative of equal protection rights; the intended scope of the Court's decision appears clear from the following:

> "Agreeing with appellees' contention that the multi-member constituency feature of the Georgia scheme was *per se* bad, the District Court entered the decree on summary judgment. We treat the question as presented in that context, and our opinion is not to be understood to say that in all instances or under all circumstances such a system as Georgia has will comport with the dictates of the Equal Protection Clause. It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. This question, however, is not presented by the record before us." *Fortson v. Dorsey, supra,* at 439.

The Court in *Fortson* did not decide that a multi-member districting scheme, even though operating to cancel out the voting strength of an element of the population, would be unconstitutional as discriminatory, preferring to withhold that determination in the absence of any support in the record.

In *Burns v. Richardson,* 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed. 2d 376 (1966), the use of multi-member districts was one attack made on the Hawaii legislative apportionment and districting statutes. As in *Fortson,* the Court held that sufficient proof had not been adduced to show discrimination:

> "But the demonstration that a particular multi-member scheme effects an invidious result must appear from evidence in the record. Cf. McGowan v. Maryland, 366 U.S. 420. That demonstration was not made here. In relying on conjecture as to the effects of multi-member districting rather than demonstrated fact, the court acted in a manner more appropriate to the body responsible for drawing up the districting plan. Speculations do not supply evidence that the multi-member districting was designed to have or had the invidious effect necessary to a judgment of the unconstitutionality of the districting." 384 U.S. 73.

Clarifying the earlier language in *Fortson,* however, the Court made it clear that under some circumstances multi-member districting could be violative of the Constitution. The Court in *Burns* characterized the language of *Fortson* as the applicable standard of constitutionality:

> "Where the requirements of *Reynolds v. Sims* are met, *apportionment schemes including multi-member districts will constitute an invidious discrimination only if it can be shown* that 'designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' *Id. (Fortson v. Dorsey)* at 439." [Emphasis added.]

Burns further specified the standard by pointing out the facts in *Fortson* which had argued against a showing of minimization or cancellation of voting strength. The Court stated:

> "It may be that this invidious effect can more easily be shown if, in contrast to the facts in *Fortson,* 1. districts are large in relation to the total number of legislators, 2. if districts are not appropriately subdistricted to assure distribution of legislators that are resident over the entire district, or 3. if such districts characterize *both houses* of a bicameral legislature rather than one." 384 U.S. 73.

The teaching of *Fortson* and *Burns* is that inherent discrimination is not apparent on the face of any multi-member districting scheme, under the Equal Protection Clause. Choosing between specific single-member legislative districts and multi-member districts is essentially a choice between political theories of representational democracy.[5] That decision, once made by the state legislature, which all agree is the body primarily responsible for political decisions, is to be disturbed by the judiciary only upon specific proof that the adopted scheme of districting is actually functioning in a manner that minimizes or cancels out the voting strength of a cognizable racial or political element of the voting population. It is largely beyond concern whether this effect occurs "designedly, or otherwise." *Fortson v. Dorsey,* 379 U.S. 433 at 439.[6]

Defendants have raised the decision in *Stout v. Bottorff,* 246 F. Supp. 825 (S.D. Ind. 1965) and 249 F. Supp. 488 (S.D. Ind. 1965), as a bar to relief for the plaintiffs in this action; hence it is necessary to examine the principles of those cases.[7]

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[5] See Burns v. Richardson, 384 U.S. 73, at 89 n. 15 (1966).

[6] In the term following that of Burns, the Supreme Court stated that "our cases do not foreclose attempts to show that in the particular circumstances of a given case multi-member districts are invidiously discriminatory." Kilgarlin v. Hill, 386 U.S. 120, at 125, n. 3, 87 S.Ct. 820, 17 L.Ed. 2d 771 (1967).

The main thrust of the first reported opinion was the decision that "special joint districts" or "floterial districts" were unconstitutional as resulting in dilution of the voting strength of voters resident in less populous counties joined with more populous counties in a floterial district; however, the issue of the constitutionality of multi-member districts was also raised. The Court stated:

> "We have been shown no evidence in these records of any discrimination, purposeful or otherwise, against any group of voters in the at-large election system in Marion County, and in the absence of such a showing, Grills (one of the plaintiffs in *Stout*) is not entitled to any relief on the basis of this claim. *Fortson v. Dorsey,* 379 U.S. 433, 438-39, 85 S.Ct. 498, 13 L.Ed. 2d 401 (1965); *Reynolds v. Sims,* 377 U.S. at 577, 84 S.Ct. 1362." *Stout v. Bottorff, supra,* at 829. [Parenthetical matter added.]

The decision in *Stout* that sufficient proof to warrant the ordering of single-member districting was not adduced is not res judicata for a decision in a later case involving different proof.

The second reported decision, 249 F. Supp. 488 (S.D. Ind. 1965), held one house apportionment plan and one senate apportionment plan constitutional under the then prevailing standards of *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964). These are the apportionment and districting provisions of the statutes presently under attack. The question whether the voting strength of citizens is diluted or minimized by apportionment and districting statutes, whether tested under *Reynolds v. Sims,* or *Burns v. Richardson,* is not one which is easily accommodated by classical concepts of res judicata or of stare decisis. The population of Indiana and the United States is highly mobile; an apportionment scheme found to meet constitutional scrutiny on a previous date may no longer do so. Reliable demographic data becomes newly available. The apportionment plans approved in the second *Stout* case were based on voter population, not on total census figures. Additionally, the standard properly applicable to a pure apportionment issue, as presented in *Stout,* has been clarified and narrowed since *Stout v. Bottorff* was decided. *Swann v. Adams,* 385 U.S. 440, 87 S.Ct. 569, 17 L.Ed. 2d 501 (1967); *Kilgarlin v. Hill,* 386 U.S. 120, 87 S.Ct. 820, 17 L.Ed. 2d 771 (1967); *Kirkpatrick v. Preisler,* 394 U.S. 526, 89 S.Ct. 1225, — L.Ed. 2d — (1969).

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[7] For an excellent chronology of the four fundamental phases of the Stout litigation, and an authoritative historical account of legislative apportionment in Indiana generally, see Wallace, *Legislative Apportionment in Indiana: A Case History,* 42 Ind. L.J. 6 (1966).

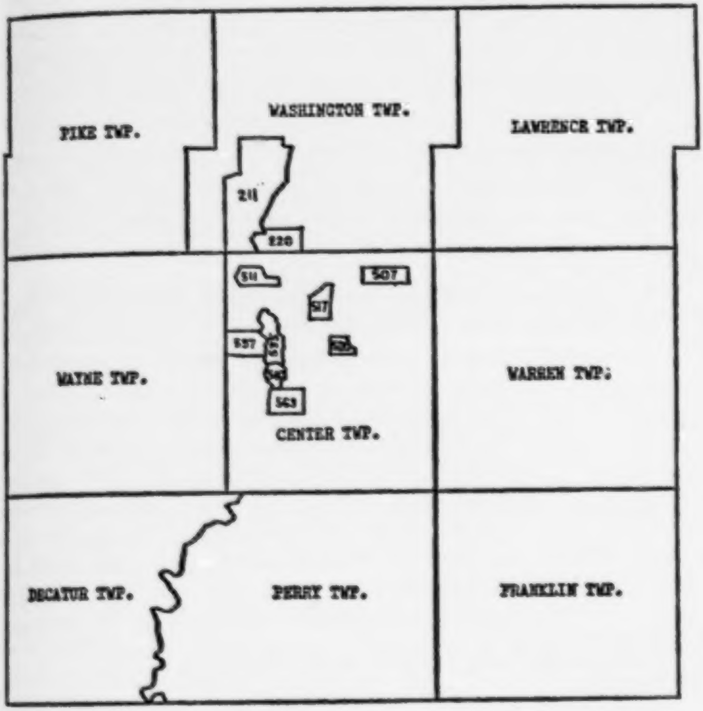
WHAT THE EVIDENCE SHOWS

The Indiana General Assembly is a bicameral legislature consisting of a House of Representatives of one hundred members and a Senate of fifty members. These numbers of legislators are the maximum permissible under the Constitution of the State of Indiana, Art. 4, Sec. 2. Under the present apportionment and districting statutes, Acts of 1965 (2d Spec. Sess.) ch. 5, sec. 3, p. 18, and ch. 4, sec. 3, p. 15, fifteen representatives and eight senators are elected at large from Marion County, Indiana, under a multi-member districting apportionment scheme.

Under the present districting and apportionment scheme for Indiana, twenty-seven Indiana senators are elected from eight multi-member senate districts, the remainder being elected from single-member districts. Eighty-six representatives are elected from twenty-five multi-member house districts, the remainder from single-member districts.

Marion County contains nine townships, and each township is subdivided, for census purposes, into the 1960 Census Tracts as shown on the following map:

1960 CENSUS TRACTS
MARION COUNTY, INDIANA


PIKE TWP.
WASHINGTON TWP.
LAWRENCE TWP.
211
220
511
507
517
537
WAYNE TWP.
WARREN TWP.
563
CENTER TWP.
DECATUR TWP.
PERRY TWP.
FRANKLIN TWP.

Census Tract Series	*Township*
100	Pike
200	Washington
300	Lawrence
400	Wayne
500	Center
600	Warren
700	Decatur
800	Perry
900	Franklin

The Cognizable Racial Element

Because the resolution of this case depends, in large part, on identifying an injured minority group residing in a modern "ghetto," the Court has analyzed the meaning of the word.[8] After considering the dictionary definitions of "ghetto," examining pertinent demographic determinants, and considering the *Report* of the National Advisory Commission on Civil Disorders, the Court adopts the following updated definition of the word "ghetto" for purposes of this case:

> Ghetto—A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominantly by members of a racial, ethnic, or other minority group, most of whom are of lower socioeconomic status than the prevailing status in the metropolitan area and whose residence in the section is often the result of social, legal, or economic restrictions or custom.

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[8] The following definitions of the word "ghetto" are contained in the sources cited:

a) ghetto—a quarter of a city in which Jews are required to live; broadly: a quarter of a city in which members of a minority group live because of social, legal or economic pressure.
[Webster's 7th New Collegiate Dictionary (based on Webster's New 3d International) (1967).]

b) ghetto—1. A section of a city in which, in former times in most European countries, all Jews were required to live. 2. A section predominantly inhabited by Jews. 3. *U.S.* A section of a city, esp. a thickly populated slum area, inhabited predominantly by Negroes, Puerto Ricans, or any other minority group, often as a result of social or economic restrictions.
[Random House Dictionary (1968).]

c) The term "ghetto" as used in this report refers to an area within a city characterized by poverty and acute social disorganization, and inhabited by members of a racial or ethical group under conditions of involuntary segregation.
[National Advisory Commission on Civil Disorders, *Report* at 6 n. 1 (U.S.G.P.O. 1968).]

The cognizable group whose voting strength is minimized and rendered ineffective resides in an area which the Court denominates the Center Township Ghetto which consists of 1960 Census Tracts 501-520, 528-531, 534-536, 540, those portions of 521-523 which are north of Massachusetts Avenue, and those portions of 537 which are north and east of White River. The analysis of this area using PX 2, DX A9, and DX 0, shows it to have an approximate 1967 population of 97,000 non-whites, of whom approximately 99.8% are Negro, and 35,000 whites.

The following Table No. 1, prepared by the Court from evidence introduced by the defendant, shows selected *Housing Characteristics* for the following Census Tracts:

Tract	*Comment*
211	A relatively wealthy suburban area chosen for contrast and in which plaintiff Chavis resides.
220	The only tract which is within the "1960 Ghetto Area," "1967 Ghetto Area," and "1967 Ghetto Voting Area," (as these areas are defined in the complaint), which is outside Center Township, other than a small portion of the "1967 Ghetto Voting Area" which extends into Warren Township.
507	A randomly selected tract which is representative of the middle-class tracts which were not within the "1960 Ghetto Area," but are within the "1967 Ghetto Area" and "1967 Ghetto Voting Area" (as these areas are defined in the complaint), which were largely integrated after 1960 (see DX A9 and DX 0). It was chosen from among Tracts 504, 505, 506, 507, 509, 521, 522, and 523.
537	A ghetto tract which, like 507, was added to the "Ghetto Areas" of 1967, but which was occupied predominantly by whites of lower economic status prior to a rapidly increasing influx of similarly

	situated non-whites after 1960 (see DX A9 and DX 0). It is the only tract of this nature.[9]
511, 517, 530, 535, and 540	These tracts are within all the "Ghetto Areas" referred to in the complaint and were randomly selected as representative of the predominantly non-white portion of the ghetto area of Center Township.
563	This tract was randomly selected to typify tracts outside the "Ghetto Areas" referred to in the complaint but which are within the predominantly white ghetto portion of Center Township.

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[9] The uncapitalized word "ghetto" used in *Comment* above is used as heretofore defined.

TABLE NO. 1

HOUSING CHARACTERISTICS

	1	2	3	4	5	6	7	
							Housing Condition	
	Non-White Population		Non-White Dwelling Units	Crowded Dwelling Units	Owner-Occupied Dwellings	Housing Units Built Prior to 1940	Dilapidated	Dilapidated and Deteriorated
Census Tract	% 1960	1967	% Range 1960	Quintile 1960	% Range 1960	% Range	% Range 1960	% Range 1960
211	3	10	0-10	1	80-100	10-25	0-2	2-10
220	76	80	50-75	2	60-79	75-90	0-2	2-10
507	13	60	10-25	4	80-100	25-50	0-2	2-10
537	37	85	25-50	5	40-59	75-90	0-2	21-30
511	94	94	75-90	4	60-79	75-90	2-10	11-20
517	56	75	25-50	5	20-39	90-100	2-10	31-40
530	43	43	25-50	5	40-59	90-100	2-10	31-40
535	99	99	90-100	5	20-39	75-90	0-2	31-40
540	98	98	75-90	5	20-39	90-100	11-20	51-60
563	15	13	0-10	3	0-20	75-90	21-30	51-100

(For brevity the letters PX refer to Plaintiffs' Exhibit and the letters DX refer to Defendant's Exhibit.)

Sources:

Column 1—PX 2, DX A9.
Column 2—DX A9 (Figures for Tracts 211 and 563 were estimated by extrapolation from sources on mobility.)
Column 3—DX A12.
Column 4—DX A8. Percent of dwelling units with more than one person per room.

Quintile 1	0.00	to	5.30%
Quintile 2	5.30	to	9.10%
Quintile 3	9.10	to	13.20%
Quintile 4	13.20	to	18.15%
Quintile 5	18.15	to	30.65%

Column 5—DX A11.
Column 6—DX A3.
Column 7—DX A18.
Column 8—DX A17.

The following Table No. 2, prepared by the Court from evidence introduced by the defendant, shows selected *Social Characteristics* for the same census tracts used for the *Housing Characteristics* in Table No. 1:

TABLE NO. 2

SOCIAL CHARACTERISTICS

	1	2	3	4	5	6	7	8
	Non-White Population		Recipients of Old Age Assistance		High School Graduates	Juvenile Delinquency Cases		Unemployment Rate
	%		1960			1960		
Census Tract	1960	1967	Persons	Rate per 1,000	Quintile 1960	Number of Cases	Rate per 1,000	1960 % Range
211	3	10	5	1.43	1	2	0.57	0-2
220	76	80	15	3.06	2	11	2.25	4-6
507	13	60	5	1.67	3	8	2.67	2-4
537	37	85	10	8.33	5	6	5.00	8+
511	94	94	30	4.69	4	19	2.97	6-8
517	56	75	60	6.25	4	61	6.35	8+
530	43	43	40	11.76	5	36	10.59	8+
535	99	99	185	24.67	5	59	7.87	8+
540	98	98	155	40.79	5	39	10.26	2-8+
563	15	13	40	26.67	5	14	9.33	4-6

Sources:

Column 1—PX 2, DX A9.
Column 2—DX A9 (Figures for Tracts 211 and 563 were estimated by extrapolation from sources on mobility.)
Column 3—DX 6 (Counted from the exhibit by the Court.)
Column 4—PX 2, DX 6 (Rate calculated by the Court.)
Column 5—DX A24 (Persons 25 years old and over having completed high school.)
    Quintile 1—65.7 -89.5%
    Quintile 2—51.3—64.9%
    Quintile 3—39.3—51.1%
    Quintile 4—27.0—38.8%
    Quintile 5— 8.8—25.7%
Column 6—DX A23 (Counted from the exhibit by the Court.)
Column 7—PX 2, DX A23 (Rate calculated by the Court.)
Column 8—DX A22 (By comparison with DX A1.)

The following Table No. 3, prepared by the Court from evidence introduced by the defendant, shows selected *Economic Characteristics* for the same census tracts used for the *Housing Characteristics* Table No. 1.

TABLE NO. 3

ECONOMIC CHARACTERISTICS

	1	2	3	4	5	6	7
	Non-White Population			Median Family Income			Automobile Ownership
			1959	1967		1985	1985
	%						
Census Tract	1960	1967	Range in Thousands	All	Non-White	Range in Thousands	Automobiles Per Family
211	3	10	10+	10,000+	10,000+	15,000+	1.75+
220	76	80	6-7	8,200	7,890	11-13,000	1-1.50
507	13	60	6-7	8,015	6,500	0-11,000	1-1.50
537	37	85	4-5	5,608	5,000	0-11,000	0-1
511	94	94	5-6	7,082	7,069	0-11,000	0-1
517	56	75	4-5	5,485	4,937	0-11,000	0-1
530	43	43	4-5	5,890	3,334	0-11,000	0-1
535	99	99	0-4	4,386	4,400	0-11,000	0-1
540	98	98	0-4	4,175	4,190	0-11,000	0-1
563	15	13	0-4	6,000	6,000	*	0-1

Sources:

Column 1—PX 2, DX A9.
Column 2—DX A9 (Figures for Tracts 211 and 563 were estimated by extrapolation from sources on mobility.)
Column 3—DX A4.
Column 4 }
Column 5 } —DX A9 p. 2 and estimates for Tracts 211 and 563 based on DX Q pp. 23-24.
Column 6—DX Q p. 24 (By comparison with DX A1).
* The estimate for Tract 563 is 11-13,000, but this is based upon the assumption that new middle-class housing will replace existing housing presently occupied by predominantly white persons of low economic status. See DX Q p. 23.
Column 7—DX Q p. 35 (By comparison with DX A1).

The following Table No. 4, prepared by the Court from the evidence in Tables No. 1 through 3, shows selected *Critical Differentiating Characteristics* of certain representative census tracts:

TABLE NO. 4
CRITICAL DIFFERENTIATING CHARACTERISTICS

	1	2	3	4	5	6	7
					Housing Condition		
	Non-White Population		Owner-Occupied Dwelling Units	Crowded Dwelling Units	Deteriorated and Dilapidated	Old Age Assistance Recipients	High School Graduates
	%		% Range	Quintile	% Range	Rate per 1,000	Quintile
Census Tract	1960	1967	1960	1960	1960	1960	1960
220	76	80	60-79	2	2-10	3.06	2
507	13	60	80-100	4	2-10	1.67	3
537	37	85	40-59	5	21-30	8.33	5
511	94	94	60-70	4	11-20	4.69	4
517	56	75	20-39	5	31-50	6.25	4
530	43	43	40-59	5	31-40	11.76	5
535	99	99	20-39	5	31-40	24.67	5
540	98	98	20-39	5	51-60	40.79	5

Sources:

Column 1—Table No. 1, Housing Characteristics	Col. 1
Column 2—Table No. 1, Housing Characteristics	Col. 2
Column 3—Table No. 1, Housing Characteristics	Col. 5
Column 4—Table No. 1, Housing Characteristics	Col. 4
Column 5—Table No. 1, Housing Characteristics	Col. 8
Column 6—Table No. 2, Social Characteristics	Col. 4
Column 7—Table No. 2, Social Characteristics	Col. 5
Column 8—Table No. 2, Social Characteristics	Col. 7
Column 9—Table No. 2, Social Characteristics	Col. 8
Column 10—Table No. 3, Economic Characteristics	Col. 3
Column 11—Table No. 3, Economic Characteristics	Col. 6
Column 12—Table No. 3, Economic Characteristics	Col. 5
Column 13—Table No. 3, Economic Characteristics	Col. 6
Column 14—Table No. 3, Economic Characteristics	Col. 7

TABLE NO. 4—Continued

8 Juvenile Delinquency Cases	9 Unemployment Rate	10	11	12	13	14 Automobile Ownership
Rate per 1,000	% Range	Range in $1,000	All	Non-White	Range in Dollars	Automobiles per Family
1968	1960	1959	1967	1967	1985	1985
2.25	4-6	6-7	8,200	7,890	11-13,000	1-1.50
2.67	2-4	6-7	8,015	6,500	0-11,000	1-1.50
5.00	8+	4-5	5,608	5,000	0-11,000	0-1
2.97	6-8	5-6	7,082	7,069	0-11,000	0-1
6.35	8+	4-5	5,485	4,937	0-11,000	0-1
10.59	8+	4-5	5,898	3,334	0-11,000	0-1
7.87	8+	0-4	4,386	4,400	0-11,000	0-1
10.26	2-8+	0-4	4,175	4,190	0-11,000	0-1

Due to significant differences between Census Tract 220 and the remainder of the Marion County "Ghetto Areas" alleged in the complaint, we find that there has been a failure of proof which would justify the inclusion of Tract 220 in the Ghetto. We find that the difference in income, the relative absence of crowded and deteriorated housing,[10] the higher educational level, and the lower rates of welfare assistance, juvenile crime and unemployment, strongly distinguish Tract 220 from the Ghetto. Because of the higher economic status of its residents and their substantially better housing conditions, Tract 220 does not meet our definition of ghetto.

While Census Tract 220 is inhabited predominantly by Negroes, and its housing is generally as old as that of most parts of the Ghetto, it is primarily a middle-class area, lying just north of 38th Street. It is wholly within Washington Township which was, until recently, a white suburban area except for Tract 220.

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[10] The housing deficiency patterns shown in DX B-E have also significantly influenced our determination of this question.

Prior to 1950, there was a small Washington Township Negro community in the area bounded by 38th Street on the south, Graceland Avenue on the east, 42d Street on the North, and Clarendon Place on the west. It was completely isolated from the Negro communities of Center Township, the closest such community being the Ghetto's northern portion running south from 30th Street, eight blocks away. It was the only Negro area in Washington Township. The Negro residents of the area, then as now, were of middle-class status.

While the *Housing, Social,* and *Economic Characteristics* Tables (Tables Nos. 1, 2, and 3) show that Tract 220 is clearly not an upper socioeconomic class area like Tract 211, the *Critical Differentiating Characteristics* Table (Table No. 4) shows that Tract 220 differs significantly from the remainder of what plaintiffs have denominated the "1960 Ghetto Area" and the "1967 Ghetto Area" which is coterminus with their "1967 Ghetto Voting Area."

With due allowance made for Tract 507, which was not significantly integrated until after 1960 and which was never a portion of the predominantly white ghetto (compare Tract 507 with Tracts 537 and 563), Tract 220 is easily differentiated from the rest of plaintiffs' "Ghetto Areas." The *Critical Differentiating Characteristics* Table features many of the salient factors which characterize a ghetto. Column 3 shows that out of the six hard core ghetto Tracts (511, 517, 530, 535, 537, and 540), only Tract 511 does not have a greater percentage of absentee landlords and/or owners than Tract 220. Column 5 shows that housing in all the hard core Tracts was in substantially worse condition than in Tract 220. Column 6 shows that the number of old age assistance recipients in the hard core

Tracts ranged from one and one-half to fifteen times as many as were in Tract 220. Column 9 shows that the unemployment rate in the hard core Tracts (except for one-quarter of Tract 540) exceeded 6% and in five of the six Tracts exceded 8%, while that in Tract 220 was less than 6%. The 1959 median family income of Tract 220, in Column 10, exceeded the same income for the hard core Tracts. That the difference is expected to continue is evidenced by Column 14 which shows that, even as far in the future as 1985, it is estimated that an average family in Tract 220 will own more than one automobile while an average family in the hard core Tracts will own less than one automobile.

Including Tract 507 in the Ghetto, several important distinctions remain which show that Tract 220 is not properly a part of the Ghetto. Column 4 shows that while the percentage of crowded dwelling units in Tract 220 ranges from 5.3 to 9.1%, the percentage in the Ghetto ranges from 13.2 to 30.65%. Column 7 shows that more than half of the residents of Tract 220 over age twenty-four have completed high school, while less than half of those in the Ghetto have done so; in fact, in some areas, less than 10%. The juvenile crime rate in Tract 220 is lower than that of the Ghetto Tracts in Column 8. The median family income characteristics in Columns 11, 12, and 13 all show Tract 220 to be middle-class in nature, while the Ghetto Tracts are distinctly shown to be in a lower economic class. One of the most crucial statistics, in this regard, is the one in Column 12 which shows that Negro family median income in Tract 507 (which was 60% Negro in 1967) is $569 less than Tract 511 (a hard core Tract with 94% Negro population) and $1,390 less than Tract 220 (80% Negro). The importance of this comparison cannot be overstated. While the non-white population of Tract 220 went from 76% to 80% from 1960 to 1967, its income range remained high (comparing 1959 with 1967) for whites and non-whites. However, Tract 507 showed a non-white population change of 13% and its 1959 income parity with Tract 220 ended. Thus it is clear that the 1960-67 influx of Negroes into Tract 507 (see Columns 1 and 2) consisted of Negro families of significantly lower economic class than those resident in Tract 220. That this difference is expected to continue is shown by Column 13 which places Tract 507 in the Ghetto with an estimated 1985 median family income less than $11,000, while that of Tract 220 is estimated at $11-13,000.

The statistical differences between Tract 220 and the Ghetto can also be expressed in more personal terms. Each of the statistical differences represents compelling interests in such legislative areas as urban renewal and rehabilitation, health care, employment training and opportunities, welfare and relief of the poor, law enforcement, quality of education, and anti-discrimination measures.

We believe that the minority group voting strength minimization discussed in *Fortson v. Dorsey* and *Burns v. Richardson,* is, in this case, best expressed in terms of the compelling interests which we find present in the Ghetto and absent in Tract 220. These interests are in addition to those common to Tract 220, the Ghetto, and the rest of Marion County in such areas as metropolitan transportation, flood control, sewage disposal, and education.

There has also been a failure of proof as to that portion of the "1967 Ghetto Voting Area" and "1967 Ghetto Area" in Warren Township. This portion is bounded by Arlington Avenue on the west, Massachusetts Avenue (also Pendleton Pike) on the south, Sheridan Avenue on the east, and

38th Street on the north. Except for the relatively recent movement of Negroes into that area, there is an absence of evidence in the record that this area in any way resembles the Ghetto. Not even the evidence introduced by defendant as to Census Tracts 601 and 602, of which the questioned area is part, offer any aid to plaintiffs in this regard. Accordingly, we find that this area is not part of the Ghetto.

Excluding Tract 220 and the Warren Township area, we find that the remaining area alleged by plaintiffs is within the Center Township Ghetto.[11] Accordingly, we find that the Center Township Ghetto consists of 1960 Census Tracts 501-520, 528-531, 534-536, 540, and those portions of 521-523 which are north of Massachusetts Avenue and of 537 which are north and east of White River.[12] *This does not represent the entire ghettoized portion of Center Township but only the portion which is predominantly inhabited by Negroes and which was alleged in the complaint.*

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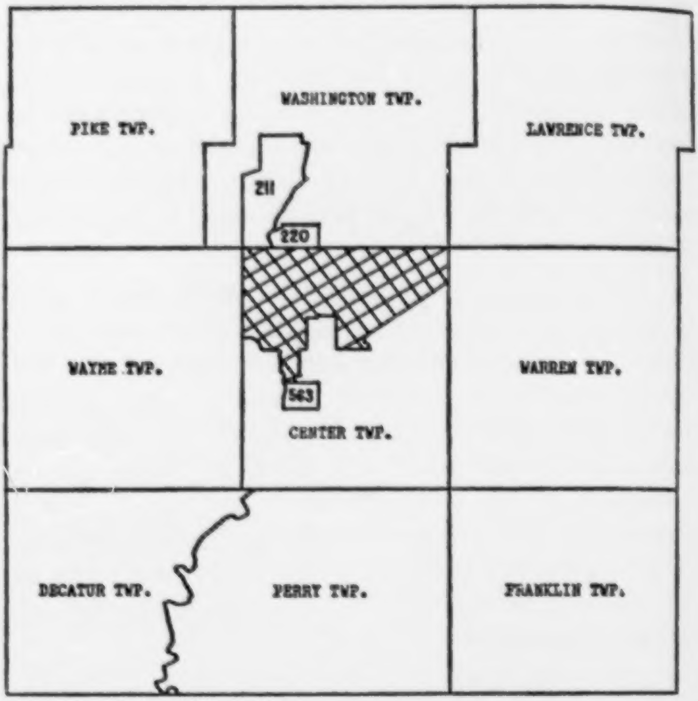
[11] Our analysis of the Center Township Ghetto, using PX 2, DX A-9, and DX 0, shows it to have an approximate 1967 population of 132,000, of which approximately 35,000 are white and 97,000 are non-white. Approximately 99.8% of the non-white population is Negro.

[12] See map following.


WASHINGTON TWP.
PIKE TWP.
LAWRENCE TWP.
211
220
WAYNE TWP.
WARREN TWP.
563
CENTER TWP.
DECATUR TWP.
PERRY TWP.
FRANKLIN TWP.

1960 CENSUS TRACTS
MARION COUNTY, INDIANA

Census Tract Series	*Township*
100	Pike
200	Washington
300	Lawrence
400	Wayne
500	Center
600	Warren
700	Decatur
800	Perry
900	Franklin

Representational Inequities

Marion County legislators have consistently RESIDED in Washington Township in numbers far disproportionately to Washington Township's percentage of the population of Marion County. The residences of Marion County legislators have not been distributed throughout the county in relation to the population density of various geographical areas of the county.

The following Table No. 5, prepared by the Court from the evidence, shows the number of senators elected from Marion County, Center Township, and Washington Township for the period 1960 through 1969:

TABLE NO. 5

	1960	1962	1964	1966	1968	Total
Marion County	5	1	6	2	7	21
Center Twp.	0	0	2	0	0	2
Washington Twp.	4	1	2	1	3	11

Source: PX 5A-E

The following Table No. 6, prepared by the Court from the evidence, shows the number of representatives elected from Marion County, Center Township, and Washington Township for the period 1960 through 1969:

TABLE NO. 6

	1960	1962	1964	1966	1968	Total
Marion County	12	12	15	15	15	67
Center Twp.	0	4	5	1	2	12
Washington Twp.	7	2	7	6	6	28

Source: PX 6A-E

The following Table No. 7, prepared by the Court from the evidence, shows the number and percentage of senators and representatives elected during the period 1960-1968, according to their residence within 11 areas of Marion County.

TABLE NO. 7

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Residence of Legislators Elected (By Marion County Area)	1960-69 Average Population	1960-69 Avg. Pop. as Percentage of Marion County Average Pop. 1960	Senators Elected						Senators Elected as Percent of 1960-68 Total	Representatives Elected						Representatives Elected as Percent of 1960-68 Total
			1960	1962	1964	1966	1968	1960-1968		1960	1962	1964	1966	1968	1960-1968	
Washington Twp. Excluding Tract 220	103,615	13.98	3	1	2	1	3	10	47.52	6	2	5	5	5	23	34.33
Census Tract 220	4,866	0.66	1	0	0	0	0	1	4.75	1	0	2	1	1	5	7.46
Center Twp. Excluding Ghetto	172,876	23.32	0	0	1	0	0	1	4.75	0	3	4	1	0	8	11.94
Center Twp. Ghetto	132,000	17.81	0	0	1	0	0	1	4.75	0	1	1	0	2	4	5.97
Pike Twp.	11,031	1.49	0	0	0	0	0	0	-0-	0	0	0	0	1	1	1.49
Wayne Twp.	105,961	14.30	0	0	0	0	0	0	-0-	1	2	0	2	2	7	10.45
Decatur Twp.	13,755	1.86	0	0	0	0	0	0	-0-	0	0	0	1	1	2	2.99
Perry Twp.	59,778	8.07	1	0	1	0	2	4	19.01	0	0	1	1	1	3	4.48
Franklin Twp.	8,929	1.21	0	0	0	0	0	0	-0-	0	0	0	0	0	0	-0-
Lawrence Twp.	49,553	6.69	0	0	1	0	1	2	9.51	2	2	0	3	2	9	13.44
Warren Twp.	78,872	10.64	0	0	0	1	1	2	9.51	1	1	2	1	0	5	7.46
Marion County	741,234	100,000	5	1	6	2	7	21	100,000	11	11	15	15	15	67	100,000

SOURCES:

Column 1—DX A25, Center and Washington Townships excluding Tract 220 and Center Township Ghetto computed from DX A25 minus the DX A9 1960-67 average for the excluded areas.

Column 2—Calculated from Column 1. (Figures do not add to 100% due to rounding off.)

Columns 3-8—PX 6, PX 6 A-E, PX 71.

Column 9—Calculated from Column 8. (Figures do not add to 100% due to rounding off.)

Columns 10-15—PX 5, PX 5 A-E, PX 71.

Columns 16—Calculated from Columns 15. (Figures do not add to 100% due to rounding off.)

The following Table No. 8 summarizes the preceding Table No. 7 and points up the inequities which have existed in representation of areas within Marion County, during the last decade, due to large multi-member districting. It is especially worth noting that Washington Township (including Tract 220) having 14.64% of the population was the residence of more than half the senators and more than two-fifths of the representatives. Conversely, the Center Township Ghetto, having a 22% larger population, was the residence of approximately one-fourth of the senators and approximately one-third of the representatives it would have had if there had been a practice of having legislators reside in areas within Marion County in proportion to the population of the areas. The over-representation of Tract 220 is the most obvious.

TABLE NO. 8

REPRESENTATIONAL INEQUITIES 1960-69

Area	1 1960-69 Avg. Pop. As Percent of Marion County Avg. Pop.	2 Percent of Marion County Senators 1960-68	3 Percent of Marion County Representatives 1960-68
Washington Twp. Excluding Tract 220	13.98	47.52	34.33
Census Tract 220	0.66	4.75	7.46
Center Twp. Excluding Ghetto	23.32	4.75	11.94
Center Twp. Ghetto	17.81	4.75	5.97
Wayne Township	14.30	- 0 -	10.45
Warren Township	10.64	9.51	7.46
Perry Township	8.07	19.01	4.48
Lawrence Township	6.69	9.51	13.44
Decatur Township	1.86	- 0 -	2.99
Pike Township	1.49	- 0 -	1.49
Franklin Township	1.21	- 0 -	- 0 -

Sources:

Column 1—Table No. 7, Col. 2
Column 2—Table No. 7, Col. 9
Column 3—Table No. 7, Col. 16

The inequity of representation by residence of legislators between Washington and Center Townships is apparent from Tables No. 7 and 8. Washington Township, the upper middle-class and wealthy suburban area having 14.64% of the population of Marion County, was the residence of 52.27% of the senators and 41.79% of the representatives. Center Township, having 41.14% of the population (approximately three times as large), was the residence of 9.51% of the senators (less than one-fifth of Washington Township) and 17.91% of the representatives (approximately three-sevenths of Washington Township).

Even if Census Tract 220 were part of the Center Township Ghetto, which we have found it is not, the inequity of overrepresentation in Washington Township persists. If it were part, the Ghetto would have 18.47% of the population, 9.51% of the senators and 13.43% of the representatives. Washington Township excluding Tract 220 has 13.98% of the population, 47.52% of the senators and 34.33% of the representatives. The figures also show that the "1967 Ghetto Voting Area" of the complaint was underrepresented in the Senate (it had approximately half the senators it should have had). [Calculations made from Table No. 8, "*Representation Inequities*, 1960-69."]

The Negro Center Township Ghetto population is sufficient in size to elect approximately two members of the House of Representatives and approximately one senator if these were specific single-member legislative districts within Marion County.

The positions taken on political issues by the legislators elected from Marion County at large tend to coalesce, causing these legislators to maintain a common, undifferentiated position. This effect is largely the result of election at large from a common constituency, and obviates representation of a substantial, though minority, interest group within that common constituency.

As a general rule, for any given candidate to be elected to the General Assembly from Marion County, his or her party must prevail in the election.

The basis for the rule is that since 1920 only slightly more than 1% of the General Assembly candidates from Marion County have been elected from the political party which did not generally prevail.

The testimony shows that the county organizations of the two major political parties in Marion County, and particularly the County Chairmen, exert a very substantial influence over the nomination of General Assembly candidates. This pervasive influence would be substantially diminished by the use of specific single-member districts because the ability of candidates with sectional attractiveness to overcome the party's primary election recommendations would increase.

The testimony also shows the Marion County political organizations continue to exert considerable control over the actions of Marion County legislators after they are elected. This control results in large part from the multi-member districting scheme.

Multi-member districting in Marion County effectively renders the county-wide primary and general election ballots for the General Assembly excessively lengthy, making it difficult for even the conscientious voter to make a rational selection.

CONCLUSIONS AS TO THE MERITS

Applying the legal principles and standards above to the evidence adduced in this action, we find that the multi-member districting provisions of the present legislative apportionment statutes of Indiana, Indiana Acts 1965 (2d Spec. Sess.), ch. 5, sec. 3, and ch. 4, sec. 3 (Ind. Ann. Stat. §§ 34-102, 34-104 (Burns Supp. 1968)), as they relate to Marion County, operate to minimize and cancel out the voting strength of a minority racial group, Negroes residing in the Center Township Ghetto, including the plaintiff, Mason Bryant, to the extent that they are deprived of equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States.

The first requirement implicit in *Fortson v. Dorsey* and *Burns v. Richardson*, that of an identifiable racial or political element within the multi-member district, is met by the Negro residents of the Center Township Ghetto. These Negro residents have interests in areas of substantive law such as housing regulations, sanitation, welfare programs (aid to families with dependent children, medical care, etc.), garnishment statutes, and unemployment compensation, among others, which diverge significantly from the interests of nonresidents of the Ghetto.

Second, the voting strength of this cognizable element is severely minimized within the senate and house districts of Marion County. Minimization has been proven to occur by virtue of the strong control which the Marion County political parties exert over the nomination of legislative candidates in the primary election, the consequent inability of the Negro voters in the Center Township Ghetto to be assured of the opportunity of voting for prospective legislators of their choice, and the absence of any particular legislator accountable to the described voters for his legislative record. Under the evidence before the Court such invidious effects will continue so long as Marion County is apportioned into large senate and house multi-member districts.

As demonstrated by the testimony of plaintiff Chavis in particular, a legislator elected from Marion County is hesitant to express the interests of the residents of the Center Township Ghetto unequivocally in the legislative chambers, though he may believe it proper that those interests be furthered. The party organizations, of necessity, exert considerable control over the nominating process in Marion County. Even a conscientious primary voter is unable to familiarize himself with the position taken by each of the scores of persons contesting for the legislative nominations of each party. The average primary voter generally must accept the recommendations of his party or vote blindly. This control hinders the individual legislator from taking a legislative position contrary to that suggested by his party organization. Control over nomination is largely control over position. Thus a particular legislator risks his political demise by consistently taking a legislative position divergent from that of the majority of the legislators of his party from Marion County.

The minimization of voting strength as described above prevents responsive and effective legislative representation of the described Ghetto voters, though they are numerically large.

The defendants argue that the plaintiffs have ample legislative representation because they are part of the constituency of each Marion County legislator, and each legislator must be somewhat responsive to their wishes. Partial responsiveness of all legislators is asserted to equal total responsiveness and the informed concern of a few specific legislators. To the contrary, under the circumstances of this case, and the proof adduced, we find the present districting scheme operates to minimize the voting strength of a cognizable racial element. *Burns v. Richardson, supra.*

We further note that under *Burns v. Richardson*, at p. 88, invidious discrimination resulting from a multi-member districting scheme can be more easily shown if certain circumstances, which were not present in *Fortson v. Dorsey*, obtain. This case presents each of those circumstances, leading to the legal conclusions here stated.

First, Marion County elects fifteen state representatives and eight state senators at large; these numbers are large (15% and 16% of each house respectively) in relation to the total number of Indiana legislators.

Second, Marion County is not subdistricted to assure distribution of legislators who are resident over the entire county. Under the districting scheme attacked in *Fortson*, twenty-one senatorial districts were allotted in groups of from two to seven among the seven most populous counties, but voters in these districts did not elect a senator by a district-wide vote; instead they joined with the voters of the other districts of the county in electing all of the county's senators by a county-wide vote. However, each senator was required to be a resident of his own senatorial district. Thus geographical distribution of senators throughout each highly populous county was assured, although the senators were elected at large by the constituency of the entire county. In the case at bar, however, we find that both Marion County senators and representatives have consistently resided in one geographical area, *i.e.*, Washington Township, in numbers far exceeding those that would be expected from Washington Township's percentage of the population of Marion County.

Third, multi-member districts were utilized in Georgia only for the state senate; in Indiana such districts characterize both houses of the General Assembly. Consequently Negroes residing in the Center Township Ghetto have a lesser chance for representation in both houses of the legislature under the present multi-member districting.

Turning to state-wide redistricting, to redistrict Marion County alone would leave the legislature confronted with impermissible population variations between new Marion County districts and other districts in the state.

As a part of this opinion the Court has included Appendices A, B, C, and D, showing population characteristics of senate and house districts, and representation characteristics of the senate and house districts.

For example, as shown by Appendix B, under the 1967 Indiana Board of Health Vital Statistics population estimates, Marion County (Senate District 19), with a population of 762,000 electing eight senators, is overrepresented in the Senate by 5.674% in comparison to a mathematically ideal senate district of 100,980. Relating this overrepresentation to the 18.934% underrepresentation of Elkhart County (Senate District 5), with an estimated population of 120,100 electing one senator, according to the same Vital Statistics estimates, there is a total variation between the two of 24.608%.

Based on the 1960 actual population figures, Marion County, with a population of 697,567, is overrepresented in the Senate by 6.491%, while Elkhart County, with a population of 106,790, is underrepresented by 14.521%, showing a total variation of 21.012%.

In the House, using the 1967 Vital Statistics figures, Marion County (House District 26) is underrepresented by 0.614%, while Knox County (House District 36) is overrepresented by 18.202%, showing a population variation of 18.816%.

According to the 1960 actual population figures, Marion County is overrepresented by 0.260%, while Floyd County (House District 35) is underrepresented by 13.679%, showing a population variation of 13.93%.

Taking the state as a whole and applying the 1967 Board of Health Vital Statistics figures, the senate districts range from 82,900 (Senate District 25—Gibson, Knox, and Pike Counties) to 120,100 (Senate District 5—Elkhart County) in population per senator, or from 17.905% overrepresented to 18.934% underrepresented. The ratio between the largest and the smallest district is thus 1.449 to 1. The deviation from the ideal population per senator according to these figures is greater than 17% in two senatorial districts, is greater than 14% in one more district, and is greater than 10% in three other districts.

Making a similar analysis of the senate districts under the 1960 census figures, they range from 80,496 (Senate District 20—Wayne and Union Counties) to 106,790 (Senate District 5—Elkhart County) in population per senator, or from 13.676% overrepresented to 14.521% underrepresented. The ratio between the largest and the smallest district according to the 1960 figures is 1.327 to 1. The deviation from the ideal population per senator is greater than 14% in one senatorial district, is greater than 13% in one more district, and is greater than 10% in still five other districts.

In the House, according to the 1967 Vital Statistics population estimates, the population per representative ranges from 41,300 (House District 36—Knox County) to 60,133 (House District 25—Hendricks, Johnson, Morgan, and Shelby Counties), in population per representative, or from 18.202% overrepresented to 19.099% underrepresented. The ratio between the largest and the smallest district is thus 1.456 to 1. The deviation from the ideal population per representative is greater than 19% in one representative district, is greater than 18% in one more district, and is greater than 16% in two more districts, and greater than 10% in still eight more districts.

Making a like analysis of the house districts under the 1960 census figures, the house districts range from 41,449 (House District 39—Vanderburgh County) to 53,003 (House District 35—Floyd County) in population per representative, or from 11.101% overrepresented to 13.679% underrepresented. The ratio between the largest and the smallest district, according to the 1960 figures is 1.279 to 1. The deviation from the ideal population per representative according to the 1960 population figures is greater than 13% in one district, is greater than 11% in one more district, and is greater than 10% in still three more districts.

The Court realizes that the 1970 census results will be available in approximately eleven months, and that to undertake a state-wide apportionment before that time necessitates use of the 1960 census statistics and the 1967 Indiana State Board of Health Vital Statistics. Under the Indiana primary election statutes,[13] candidates for the 1971 General Assembly will be required to file for office with the Indiana Secretary of State before the 1970 census statistics are available for use in redistricting. Therefore, the 1971 Indiana General Assembly would be elected under the present invalid apportionment and the first General Assembly properly apportioned according to the 1970 census would be the 1973 General Assembly. To allow such a lengthy interim of malapportionment would violate the rights of the plaintiffs and would contravene the rationale of *Swann v. Adams*, 383 U.S. 210, 86 S.Ct. 767, 15 L.Ed. 2d 707 (1966). For that reason this Court is of the opinion that the total reapportionment should proceed immediately rather than waiting for the 1970 census statistics.

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[13] Ind. Ann. Stat. § 29-3605 (Burns Supp. 1968).

In *Stout v. Bottorff*, 246 F. Supp. at 831 (1965), the Court, having in mind the Indiana constitutional prohibition against dividing counties for senatorial apportionment,[14] expressed the hope that the Indiana General Assembly could rearrange the legislative districts to meet the Indiana as well as the Federal Constitution. The Court recognized the dilemma that faced the legislators in performing the task if the limitations of the Indiana Constitution, and especially its interpretation by the decision in *Denney v. State ex rel. Basler,* 144 Ind. 503, 42 N.E. 929 (1896), continued to stand in the way and prevent the legislative districts being established in accordance with the federal standard. The Court noted that an apportionment scheme based on state constitutional provisions which fails to meet the federal standard is violative of the Fourteenth Amendment, and in the case of such an " 'unavoidable conflict' between the Federal and State Constitutions, 'the Supremacy Clause of course controls.' *Reynolds v. Sims,* 377 U.S. at 584, 84 S.Ct. at 1393 (1964)." The Court observed that the Indiana legislature was required to make every possible effort to accommodate the apportionment provisions of the Indiana Constitution and the rule of the *Denney case,* but the Court cautioned that it could not accommodate either the Indiana constitutional apportionment requirement or the rule in *Denney* at the expense of violating the Equal Protection Clause of the Fourteenth Amendment by failing to accord substantial equality of representation in the General Assembly to voters of Indiana.

The Indiana General Assembly met the dilemma and enacted an apportionment scheme which did not cross county lines. This scheme was found acceptable to the Court in the second *Stout* case, 249 F. Supp. 488 (1965). This may not be possible again. Since that case, the geographical standards established by *Reynolds v. Sims* have been clarified and narrowed as heretofore noted.

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[14] "A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided." Art. 4, Sec. 6, Indiana Constitution.

In the course of these proceedings, the status of the respective plaintiffs and the quantum of proof adduced in their behalf were questioned.

As to the plaintiffs Marilyn *Hotz* and Rowland *Allen*, there is a failure of proof to establish a basis for granting the relief prayed for in the complaint.

The evidence shows that plaintiff Marilyn *Hotz* is a white person, by political preference a Republican who actively votes in both the Republican primary and the general elections. She resides in Marion County but outside the City of Indianapolis in what the complaint describes as the "White Suburban Belt." She has voted for precinct committeemen and vice-committeemen in the Republican primary elections and on General Assembly seats in the Republican primary elections. When asked whether she made an individual voter's choice, she stated that she voted "the slate." Her complaint is that persons living outside the City include less than one-third of the population of Marion County but almost one-half of the regular Republican voters of the county, and that such residents are deprived of a proportionate voice as to who their Republican state legislators shall be, in years of Republican victory in Marion County. While the evidence indicates the selection of tickets of candidates for Republican primary elections are put together by the party organization and the election of the legislative delegation from Marion County is elected at large, the evidence falls short of establishing that plaintiff Hotz's interests are significantly different from those of other Republican voters in the years of Republican victory. And while her voice as to whom the Republican state legislators shall be may not be proportionate to the percentage of Marion County Republican voters who live outside the City of Indianapolis, this complaint primarily is directed to intra-party organization and selection of candidates and does not in our opinion rise to the degree of a constitutional deprivation of equal protection by reason of the statutes here under attack.

Plaintiff Rowland *Allen* (who describes himself as a political independent) complains, like Marilyn Hotz, that he is frustrated in his effort to cast a vote based upon the individual merit of candidates and the issues presented in their campaigns, by reason of the length of the ballots relating to General Assemblymen. His complaint is that he is increasingly bewildered by the number of candidates for election to the General Assembly. Plaintiff Allen, a retired businessman, and former Personnel Director of L. S. Ayres & Co., asserted in his testimony that when he voted he had an opinion only as to some of the candidates and that he had not found a source available by which he could form an opinion as to all candidates.

While plaintiff Allen's testimony suggests the desirability of single-member districting, the factor of lengthy ballots alone is not sufficient to justify a declaration of the unconstitutionality of multi-member districting.

While we find that the plaintiff *Chavis* is a Negro, residing in Marion County, a practicing lawyer with offices in the Center Township Ghetto, with fifteen years of practice in the Ghetto, with eighty-five to ninety percent of his clients living in the Ghetto Area, a former member of the Indiana Senate, and a Ward Chairman of his political party in the Center Township Ghetto, a man whose interests obviously lie with those who reside in the Center Township Ghetto, still we find that he is not a resident nor a voter in the Center Township Ghetto and therefore is entitled to no relief.

Plaintiff *Walker* appears before the Court in two statuses. His first status is as a Negro voter resident in Lake County, and his second status is as an Indiana voter who is resident outside Marion County.

In his 1st status it is alleged that the Negro populations of Lake and Marion Counties are approximately equal and should be entitled to equal representation. It is alleged that since Negroes in Lake County can vote for only five senators and eleven representatives, as opposed to Marion County Negroes who vote for eight senators and fifteen representatives, then plaintiff Walker has only five-eighths and eleven-fifteenths representation in the respective houses of the General Assembly and is, therefore, allegedly underrepresented. The Court holds that this position is untenable in this case because it is not supported in the record before us.

It has not been shown that Lake County Negroes have a socioeconomic distribution and status comparable to those in Marion County.

Neither has it been shown by sufficient evidence that Lake County Negroes are a racial minority group which has been deprived of representation so as to distinguish them from other Lake County resident voters.

Finally, the assumption of underrepresentation does not take into consideration this Court's finding that the evidence only shows that Negro voters resident in the Center Township Ghetto are significantly underrepresented as a racial and socioeconomic minority group.

In his 2nd status, we find that plaintiff Walker is a voter of Indiana who resides outside Marion County. Applying the uniform district principle, discussed *infra* in the remedy section, we find that he probably has received less effective representation than Marion County voters. It has been shown that he votes for fewer legislators and, therefore, has fewer legislators to speak for him. He also, theoretically, casts fewer critical votes than Marion County voters, but we decline to so hold in the absence of sufficient evidence as to other factors such as bloc and party voting in Lake County. We hold that, in the absence of stronger evidence of dilution, his remedy is limited to the consideration which should be given to the uniform district principle in any subsequent reapportionment of the Indiana General Assembly.

While it is alleged that plaintiff Ramsey is a Negro resident and voter of the 1967 Ghetto Voting Area specified in the complaint, there is no evidence that he resides in the Center Township Ghetto. Thus, unlike plaintiff Bryant he has not shown by sufficient evidence that he is underrepresented, as he may live outside the Center Township Ghetto.

The evidence establishes that plaintiff Mason Bryant is a resident and a voter of the Center Township Ghetto, with proper standing to sue, and thus is entitled to the relief prayed for.

THE REMEDY

In view of the evidence presented, the present at large districting scheme for Marion County unconstitutionally minimizes and renders ineffective the vote of the Negroes residing in the Center Township Ghetto. Hence a redistricting of Marion County is necessitated.

Although the plaintiffs in this case have directed their complaint to bring about a redistricting of Marion County, this Court must necessarily consider the evidence as it applies to both Marion County and the State of Indiana as a whole. As the United States Supreme Court stated in *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 673, 84 S.Ct. 1429, 12 L.Ed. 2d 595 (1964), "[r]egardless of possible concessions made by the parties and the scope of the consideration of the courts below, in reviewing a state apportionment case this court must of necessity consider the challenged scheme as a whole in determining whether the particular State's apportionment plan, in its entirety, meets federal constitutional requisites."

Once the determination is made that Marion County should be redistricted to correct the invidious minimization of the voting strength of a cognizable racial minority group, it becomes clear beyond question that the evidence adduced in this case and the additional apportionment requirements set forth by the Supreme Court call for a redistricting of the entire state as to both houses of the General Assembly.

In the performance of its task the General Assembly might wish to give consideration to certain principles of legislative apportionment brought out at the trial in these proceedings.

In this regard, the Court in no way intends to intimate by this opinion that the Negroes residing in the Center Township Ghetto are entitled to a certain number of legislators. Legislative districts are to be drawn with an eye that is color-blind; but the Court notes that sophisticated gerrymandering has been soundly condemned. *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed. 2d 110 (1960).

Much has been said, before and during the trial of this case, concerning the "critical vote" analysis of Banzhaf, *Multi-Member Electoral Districts—Do They Violate the "One Man, One Vote" Principle*, 75 Yale L.J. 1309, esp. 1319-24 (1966). *Cf. Kilgarlin v. Hill*, 386 U.S. 120, 125 n. 3 (1967). This analysis purports to show that where District A elects one representative from two candidates and District B, which is eight times as populous as District A, elects eight representatives from sixteen candidates, voters in District B cast more "critical votes" *i.e.*, break a theoretical tie, than voters in District A. We take a simpler view of the situation than is presented in the cited article. Applying the analysis for example to the facts in this case, voters in Johnson and Bartholomew Counties, a single-member senatorial district, choose between two senatorial candidates while voters in Marion County choose between sixteen candidates for eight senate seats. It is clear that each voter in Marion County has a greater theoretical opportunity to cast a critical or deciding vote in any legislative election under the present districting scheme.

John Banzhaf, Associate Professor of Law at George Washington University, testified that when the representatives of a multi-member district vote as a bloc in a legislative body, each representative's vote has a greater weight than that of a representative from a single-member district. Having found that the Marion County elected delegations usually do vote in blocs, we believe that the testimony has application here. Also, as each member of the bloc delegation is responsible to the voter majority who elected the whole, each Marion County voter has a greater voice in the legislature, having more legislators to speak for him than does a comparable voter in the Johnson-Bartholomew single-member senatorial district.

Conversely, we note that if all districts were equal in size and elected equal numbers of legislators, then all constituents of each district would have the same voice in the legislature. If the districts were uniform and not unduly large, this would be an effective means of giving each citizen equal voting power, *e.g.*, *Baker v. Carr*, 369 U.S. 186, 81 S.Ct. 230, 7 L.Ed. 2d 663 (1962), *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964), and

Kirkpatrick v. Preisler, 394 U.S. 526, 89 S.Ct. 1225, — L.Ed. 2d — (1969), while avoiding problems of diluting political or racial minority group voting powers, *Fortson v. Dorsey,* 379 U.S. 433, 438-39, 85 S.Ct. 498, 13 L.Ed. 2d 401 (1965), and *Burns v. Richardson,* 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed. 2d 376 (1966).

The use of uniform districts is one method of curing defects in unequal representation. The principle is that equal numbers of persons should be represented by equal numbers of legislators in each district of a legislative body. This would eliminate problems of critical vote inequality, unequal bloc representation and unequal numbers of voices in the legislature per person. While application of the uniform district principle would require all districts to be equal in population and elect equal numbers of legislators from each uniform district, it does not require single-member districts. For example, the Indiana House of Representatives could consist of 100 districts electing one representative each, fifty districts with two representatives each, twenty-five districts with four representatives each, or (assuming a lowering of the size of the House from 100 to 99 members) thirty-three districts electing three representatives each. We believe that the Indiana General Assembly, if it does the apportionment found to be needed here, should give consideration to the uniform district principle in making its apportionment. The maximum size of the uniform districts should, of course, not be so large as to create the improper dilution of minority group voting strength found in the instant case.

While recognizing the right of the injured plaintiffs to have their constitutional rights vindicated at the earliest practicable time, we must also recognize that the federal judiciary functions within a system of federalism which entrusts the responsibility of legislative apportionment and districting primarily to the state legislature. We must therefore afford Governor Edgar D. Whitcomb a reasonable opportunity to call a Special Session of the General Assembly of the State of Indiana so that it may enact legislation to redistrict the State and reapportion the legislative seats in the General Assembly in accordance with federal constitutional requirements and in compliance with this opinion. An injunction will not issue at this time and the State will be given until October 1, 1969, to enact statutes redistricting the State and reapportioning the legislative seats in the General Assembly to remedy the improper districting and malapportionment we have found.

This cutoff date is one by which there would have to be filed with the Court an enactment approved by both houses of the Indiana General Assembly and signed into law by the Governor. If the legislature does not act, or if its action does not meet constitutional standards, our duty will be clear to take such action as is necessary to accord the injured plaintiffs their rights.

Due to the relative proximity in time of the initial filing date for candidates for the next primary election for members of the Indiana General Assembly [February 24, 1970], no final judgment will issue without an adequate apportionment plan being approved and/or promulgated therein.

/s/ Otto Kerner
Judge
United States Court of Appeals
for the Seventh Circuit
/s/ William E. Steckler
Judge
United States District Court
/s/ James E. Noland
Judge
United States District Court

APPENDIX A
POPULATION CHARACTERISTICS OF SENATE DISTRICTS INDIANA SENATE

District	Counties	County Pop. 1960 Census	Dist. Pop. 1960 Census	County Pop. 1967 (Est.)	Dist. Pop. 1967 (Est.)	Senators per Dist.	Dist. Population Per Senator 1960	Dist. Population Per Senator 1967 Est.
1	Lake	513,269	513,269	536,300	536,300	5	102,654	107,260
2	Jasper	18,842	90,173	19,400	113,400	1	90,173	113,400
	Newton	11,052		11,600				
	Porter	60,279		82,400				
3	LaPorte	95,111	95,111	106,200	106,200	1	95,111	106,200
4	Marshall	32,443	271,057	34,500	286,200	3	90,352	95,400
	St. Joseph	238,614		251,700				
5	Elkhart	106,790	106,790	120,100	120,100	1	106,790	120,100
6	Kosciusko	40,373	103,099	45,700	113,300	1	103,099	113,300
	Lagrange	17,380		19,300				
	Noble	28,162		29,900				
	Steuben	17,184		18,400				
7	Adams	24,643	285,110	26,500	320,500	3	95,037	109,833
	Allen	232,196		263,200				
	DeKalb	28,271		30,800				
8	Huntington	33,814	87,373	35,600	93,300	1	87,373	93,300
	Wabash	32,605		34,600				
	Whitley	20,954		23,100				
9	Cass	40,931	95,888	41,900	100,500	1	95,888	100,500
	Fulton	16,957		16,900				
	Miami	38,000		41,700				
10	Benton	11,912	87,845	11,600	91,800	1	87,845	91,800
	Carroll	16,934		18,100				
	Pulaski	12,837		12,800				
	Starke	17,911		18,800				
	Warren	8,545		9,200				
	White	19,709		21,300				
11	Tippecanoe	89,122	89,122	98,000	98,000	1	89,122	98,000
12	Howard	69,509	85,365	80,600	98,100	1	85,365	98,100
	Tipton	15,856		17,500				
13	Blackford	14,792	90,533	15,700	96,400	1	90,533	96,400
	Grant	75,741		80,700				
14	Delaware	110,938	183,164	122,900	200,900	2	91,582	100,450
	Jay	22,572		24,200				
	Randolph	28,434		30,200				
	Wells	21,220		23,600				
15	Hancock	26,665	201,383	32,800	221,600	2	100,692	110,800
	Henry	48,899		52,800				
	Madison	125,819		136,400				

APPENDIX A—(Continued)

District	Counties	County Pop. 1960 Census	Dist. Pop. 1960 Census	County Pop. 1967 (Est.)	Dist. Pop. 1967 (Est.)	Senators per Dist.	Dist. Population Per Senator	
							1960	1967 Est.
16	Boone	27,543	98,440	29,700	109,500	1	98,440	109,500
	Clinton	30,765		32,300				
	Hamilton	40,132		47,500				
17	Fountain	18,706	90,526	18,600	93,400	1	90,526	93,400
	Montgomery	32,089		33,300				
	Parke	14,804		14,900				
	Putnam	24,927		26,600				
18	Hendricks	40,896	86,171	49,800	103,700	1	86,171	103,700
	Morgan	33,875		41,500				
	Owen	11,400		12,400				
19	Marion	697,567	697,567	762,000	762,000	8	87,196	95,250
20	Union	6,457	80,496	7,000	89,100	1	80,496	89,100
	Wayne	74,039		82,100				
21	Decatur	20,019	98,959	22,600	105,900	1	98,959	105,900
	Fayette	24,454		25,400				
	Rush	20,393		20,700				
	Shelby	34,093		37,200				
22	Bartholomew	48,198	91,902	56,900	108,800	1	91,902	108,800
	Johnson	43,704		51,900				
23	Clay	24,207	172,069	24,500	172,300	2	86,035	86,150
	Sullivan	21,721		20,500				
	Vermillion	17,683		16,700				
	Vigo	108,458		110,600				
24	Brown	7,024	92,576	8,000	106,700	1	92,567	106,700
	Greene	26,327		26,600				
	Monroe	59,225		72,100				
25	Gibson	29,949	84,307	29,400	82,900	1	84,307	82,900
	Knox	41,561		41,300				
	Pike	12,797		12,200				
26	Posey	19,214	185,008	21,100	189,400	2	92,504	94,700
	Vanderburgh	165,794		168,300				
27	Daviess	26,636	104,358	27,300	100,700	1	104,358	100,700
	Dubois	27,463		30,200				
	Martin	10,608		11,000				
	Spencer	16,074		16,700				
	Warrick	23,577		25,500				
28	Jackson	30,556	101,816	33,100	107,500	1	101,816	107,500
	Lawrence	36,564		37,700				
	Orange	16,877		17,000				
	Washington	17,819		19,700				
29	Crawford	8,379	97,821	8,500	101,100	1	97,821	101,100
	Floyd	53,003		53,900				
	Harrison	19,207		19,700				
	Perry	17,232		19,000				

APPENDIX A—(Continued)

District	Counties	County Pop. 1960 Census	Dist. Pop. 1960 Census	County Pop. 1967 (Est.)	Dist. Pop. 1967 (Est.)	Senators per Dist.	Dist. Population Per Senator	
							1960	1967 Est.
30	Clark	66,453	105,157	68,200	109,700	1	105,157	109,700
	Jefferson	24,061		25,200				
	Scott	14,643		16,300				
31	Dearborn	28,674	104,854	30,000	99,300	1	104,854	99,300
	Franklin	17,015		17,000				
	Jennings	17,267		19,600				
	Ohio	4,165		3,900				
	Ripley	20,641		22,500				
	Switzerland	7,092		6,300				
State	Total	4662,498	4662,498	5049,000	5049,000	50	*93,249	*100,980

* Average = Ideal District

Sources: Apportionment and districting according to Burns' Ind. Stat. § 34-104 (1965, Supp. 1968).
1967 county population estimates based on DX J pp. 20-22.
All calculations made by the Court.

APPENDIX B
REPRESENTATION CHARACTERISTICS OF SENATE DISTRICTS

District	District Population as Percentage of Ideal District 1960	1967	Degree of Over- or Underrepresentation (Variation from Ideal 1960	1967
1	110.086	106.219	—10.086%	— 6.219%
2	96.701	112.299	+ 3.299%	—12.299%
3	101.997	105.169	— 1.997%	— 5.169%
4	96.893	94.474	+ 3.107%	+ 5.526%
5	114.521	118.934	—14.521%	—18.934%
6	110.563	112.200	—10.563%	—12.200%
7	101.917	108.767	— 1.917%	— 8.767%
8	93.697	92.395	+ 6.303%	+ 7 605%
9	102.830	99.525	— 2.830%	+ 0.475%
10	94.205	90.909	+ 5.795%	+ 9.091%
11	95.574	97.049	+ 4.426%	+ 2.951%
12	91.545	97.148	+ 8.455%	+ 2.852%
13	97.087	95.464	+ 2.913%	+ 4.536%
14	98.212	99.475	+ 1.788%	+ 0.525%
15	107.982	109.725	— 7.982%	— 9.725%
16	105.567	108.437	— 5.567%	— 8.437%
17	97.080	92.494	+ 2.920%	+ 7.506%
18	92.410	102.694	+ 7.590%	— 2.694%
19	93.509	94.326	+ 6.491%	+ 5.674%
20	86.324	88.235	+13.676%	+11.765%
21	106.123	104.872	— 6.123%	— 4.872%
22	98.555	107.744	+ 1.445%	— 7.744%
23	92.264	85.314	+ 7.736%	+14.686%
24	99.278	105.664	+ 0.722%	— 5.644%
25	90.411	82.095	+ 9.589%	+17.905%
26	99.201	93.781	+ 0.799%	+ 6.219%
27	111.913	99.723	—11.913%	+ 0.277%
28	109.187	106.457	— 9.187%	— 6.457%
29	104.903	100.119	— 4.903%	— 0.119%
30	112.770	108.635	—12.770%	— 8.635%
31	112.445	98.336	—12.445%	+ 1.664%

SUMMARY

	1960	1967
Range of Variation	28.197%	36.839%
Ratio of Largest to Smallest	1.327	1.449
Mean Variation (Dist.	6.447%	7.006%
Districts Varying by More than ±5.000%	18/31	21/31
Districts Varying by More Than ±1.000%	29/31	27/31

Source: Calculations made by Court from Appendix A.

APPENDIX C
POPULATION CHARACTERISTICS OF HOUSE DISTRICTS INDIANA HOUSE REPRESENTATIVES

District	Counties	County Pop. 1960 Census	Dist. Pop. 1960 Census	County Pop. 1967 (Est.)	Dist. Pop. 1967 (Est.)	Representatives per Dist.	Dist. Population Per Representative 1960	Dist. Population Per Representative 1967 Est.
1	Lake	513,269	513,269	536,300	536,300	11	46,661	48,755
2	Jasper	18,842	91,958	19,400	114,600	2	45,979	57,300
	Porter	60,279		82,400				
	Pulaski	12,837		12,800				
3	LaPorte	95,111	95,111	106,200	106,200	2	47,056	53,100
4	St. Joseph	238,614	238,614	251,700	251,700	5	47,729	50,340
5	Elkhart	106,790	152,332	120,100	169,300	3	50,777	56,433
	Lagrange	17,380		19,300				
	Noble	28,162		29,900				
6	DeKalb	28,271	45,455	30,800	49,200	1	45,455	49,200
	Steuben	17,184		18,400				
7	Benton	11,912	42,673	11,600	44,500	1	42,673	44,500
	Newton	11,052		11,600				
	White	19,709		21,300				
8	Marshall	32,443	50,354	34,500	53,300	1	50,354	53,300
	Starke	17,911		18,800				
9	Fulton	16,957	144,703	16,900	155,900	3	48,234	51,967
	Huntington	33,814		35,600				
	Kosciusko	40,373		45,700				
	Wabash	32,605		34,600				
	Whitley	20,954		23,100				
10	Allen	232,196	232,196	263,200	263,200	5	46,439	52,640
11	Adams	24,643	45,863	26,500	50,100	1	45,863	50,100
	Wells	21,220		23,600				
12	Carroll	16,934	95,865	18,100	101,700	2	47,933	50,850
	Cass	40,931		41,900				
	Miami	38,000		41,700				
13	Fountain	18,706	44,934	18,600	44,500	1	44,934	44,500
	Vermillion	17,683		16,700				
	Warren	8,545		9,200				
14	Tippecanoe	89,122	89,122	98,000	98,000	2	44,561	49,000
15	Montgomery	32,089	46,173	33,300	48,200	1	46,173	48,200
	Parke	14,804		14,900				
16	Boone	27,543	98,440	29,700	109,500	2	49,220	54,750
	Clinton	30,765		32,300				
	Hamilton	40,132		47,500				
17	Howard	69,509	85,365	80,600	98,100	2	42,683	49,050
	Tipton	15,856		17,500				
18	Blackford	14,792	90,533	15,700	96,400	2	45,267	48,200
	Grant	75,741		80,700				

APPENDIX C—(Continued)

District	Counties	County Pop. 1960 Census	Dist. Pop. 1960 Census	County Pop. 1967 (Est.)	Dist. Pop. 1967 (Est.)	Representatives per Dist.	Dist. Population Per Representative	
							1960	1967 Est.
19	Madison	125,819	125,819	136,400	136,400	3	41,938	45,467
20	Delaware	110,938	133,150	122,900	147,100	3	44,503	49,033
	Jay	22,572		24,200				
21	Henry	48,899	48,899	52,800	52,800	1	48,899	52,800
22	Randolph	28,434	102,473	30,200	112,300	2	51,237	56,150
	Wayne	74,039		82,100				
23	Vigo	108,458	130,179	110,600	131,100	3	43,393	43,700
	Sullivan	21,721		20,500				
24	Clay	24,207	49,134	24,500	51,100	1	49,134	51,100
	Putnam	24,927		26,600				
25	Hendricks	40,896	152,568	49,800	180,400	3	50,859	60,133
	Johnson	43,704		51,900				
	Morgan	33,875		41,500				
	Shelby	34,093		37,200				
26	Marion	697,567	697.567	762,000	762,000	15	46,504	50,800
27	Hancock	26,665	47,058	32,800	53,500	1	47,058	53,500
	Rush	20,393		20,700				
28	Fayette	24,454	47,926	25,400	49,400	1	47,926	49,400
	Franklin	17,015		17,000				
	Union	6,457		7,000				
29	Bartholomew	48,198	98,763	56,900	112,600	2	49,382	56,300
	Decatur	20,019		22,600				
	Jackson	30,556		33,100				
30	Brown	7,024	102,813	8,000	117,800	2	51,407	58,900
	Lawrence	36,564		37,700				
	Monroe	59,225		72,100				
31	Daviess	26,636	91,848	27,300	94,300	2	45,924	47,150
	Greene	26,327		26,600				
	Martin	10,608		11,000				
	Orange	16,877		17,000				
	Owen	11,400		12,400				
32	Dearborn	28,674	84,633	30,000	87,900	2	42,317	43,950
	Jefferson	24,061		25,200				
	Ohio	4,165		3,900				
	Ripley	20,641		22,500				
	Switzerland	7,092		6,300				
33	Clark	66,453	98,363	68,200	104,100	2	49,182	52,050
	Jennings	17,267		19,600				
	Scott	14,643		16,300				
34	Crawford	8,379	45,405	8,500	47,900	1	45,405	47,900
	Harrison	19,207		19,700				
	Washington	17,819		19,700				
35	Floyd	53,003	53,003	53,900	53,900	1	53,003	53,900
36	Knox	41,561	41,561	41,300	41,300	1	41,561	41,300

APPENDIX C—(Continued)

District	Counties	County Pop. 1960 Census	Dist. Pop. 1960 Census	County Pop. 1967 (Est.)	Dist. Pop. 1967 (Est.)	Representatives per Dist.	Dist. Population Per Representative	
							1960	1967 Est.
37	Dubois	27,463	97,143	30,200	103,600	2	48,572	51,800
	Perry	17,232		19,000				
	Pike	12,797		12,200				
	Spencer	16,074		16,700				
	Warrick	23,577		25,500				
38	Gibson	29,949	49,153	29,400	50,500	1	49,153	50,500
	Posey	19,214		21,100				
39	Vanderburgh	165,794	165,794	168,300	168,300	4	41,449	42,075
State	Totals	4662,498	4662,498	5049,000	5049,000	100	*46,625	*50,490

* Average = Ideal District

Sources: Apportionment and districting according to Burns Ind. Stat. § 34-102 (1965, Supp. 1968).

1967 county population estimates based on DX J pp. 20-22.

All calculations made by the Court.

APPENDIX D

REPRESENTATION CHARACTERISTICS OF HOUSE DISTRICTS

	District Population as Percentage of Ideal District		(Variation from Ideal) Degree of Over- or Underrepresentation	
District	1960	1967	1960	1967
1	100.077	96.564	— 0.077%	+ 3.436%
2	98.614	113.488	+ 1.386%	—13.488%
3	100.924	105.169	— 0.924%	— 5.169%
4	102.368	99.703	— 2.368%	+ 0.297%
5	108.905	111.771	— 8.905%	—11.771%
6	97.491	97.445	+ 2.509%	+ 2.555%
7	91.524	88.136	+ 8.476%	+11.864%
8	107.998	105.565	— 7.998%	— 5.565%
9	103.451	102.925	— 3.451%	— 2.925%
10	99.601	104.258	+ 0.399%	— 4.258%
11	98.366	99.228	+ 1.634%	+ 0.772%
12	102.805	100.713	— 2.805%	— 0.713%
13	96.373	88.136	+ 3.627%	+11.864%
14	95.573	97.049	+ 4.427%	+ 2.951%
15	99.030	95.464	+ 0.970%	+ 4.536%
16	105.566	108.437	— 5.566%	— 8.437%
17	91.540	97.148	+ 8.460%	+ 2.852%
18	97.087	95.464	+ 2.913%	+ 4.536%
19	89.947	90.051	+10.053%	+ 9.949%
20	95.449	97.114	+ 4.551%	+ 2.886%
21	104.877	104.575	— 4.877%	— 4.575%
22	109.892	111.210	— 9.892%	—11.210%
23	93.068	86.552	+ 6.932%	+13.448%
24	105.381	101.208	— 5.381%	— 1.208%
25	109.081	119.099	— 9.081%	—19.099%
26	99.740	100.614	+ 0.260%	— 0.614%
27	100.929	105.962	— 0.929%	— 5.962%
28	102.790	97.841	— 2.790%	+ 2.159%
29	105.922	111.507	— 5.922%	—11.507%
30	110.254	116.657	—10.254%	—16.657%
31	98.497	93.385	+ 1.503%	+ 6.615%
32	90.760	87.047	+ 9.240%	+12.953%
33	105.484	103.090	— 5.484%	— 3.090%
34	97.383	94.870	+ 2.617%	+ 5.130%
35	13.679	106.754	—13.67[illegible]%	— 6.754%
36	89.139	81.798	+10.861%	+18.202%
37	104.176	102.595	— 4.176%	— 2.595%
38	105.422	100.020	— 5.422%	— 0.020%
39	88.899	83.333	+11.101%	+16.677%

SUMMARY

	1960	1967
Range of Variation	24.780%	37.301%
Ratio of Largest to Smallest District	1.279	1.456
Mean Variation	5.177%	6.905%
Districts Varying by More Than ±5.000%	18/39	20/39
Districts Varying by More Than ±1.000%	33/39	34/39

Source: Calculations made by Court from Appendix C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Patrick Chavis, et al.
Plaintiffs

vs.

Edgar D. Whitcomb, Governor of the State of Indiana
Defendant

and

John C. Ruckelshaus, et al.
Intervening Defendants

NO. IP 69-C-23

December 15th, 1969

Before KERNER, Circuit Judge, and STECKLER and NOLAND, District Judges.

THE COURT'S PLAN AND ORDER FOR REAPPORTIONMENT OF THE LEGISLATIVE SEATS IN THE GENERAL ASSEMBLY OF INDIANA

By Judges Kerner, Steckler, and Noland:

This suit was tried by the three-judge court on June 17 and 18, 1969. After consideration of the legal and factual issues, the Court entered its opinion and a separate order on July 28, 1969.[1] The Court found that the multimember districting provisions of the present legislative apportionment statutes of Indiana, Indiana Acts of 1965 (2d Spec. Sess.), ch. 5, sec. 3, and ch. 4, sec. 3 (Ind. Ann. Stat. §§ 34-102, 34-104 (Burns Supp. 1968)), as they relate to Marion County, operate to minimize and cancel out the voting strength of a cognizable racial minority group, which was defined and delineated in the opinion, to the extent that the members of such minority group are deprived of equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States. We therefore declared those portions of the legislative apportionment statutes to be unconstitutional and void.

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[1] — F. Supp. — (S.D. Ind. 1969).

Upon the evidence adduced, it was further determined that: (1) to redistrict Marion County alone, so as to provide districts meeting constitutional standards, would leave constitutionally impermissible population variations between the newly created districts in Marion County and other districts in the state, and (2) independent of the new districts in Marion County, constitutionally impermissible population variations would remain between presently existing districts in the state when compared among themselves. Thus the portions of the statutes relating to Marion County were found to be not severable from the full body of the statutes. We therefore found a redistricting of the entire state as to both houses of the General Assembly to be necessary.

While recognizing the right of the injured plaintiffs to have their constitutional rights vindicated at the earliest practicable time, we also recognized that the federal judiciary functions within a system of federalism which entrusts the responsibility of legislative apportionment and districting primarily to the state legislature. We therefore granted the State until October 1, 1969, to enact statutes redistricting the State and reapportioning the legislative seats in the General Assembly to remedy the constitutionally impermissible districting and apportionment, retaining jurisdiction should the State fail to comply.

On August 20, 1969, defendant Edgar D. Whitcomb, Governor of the State of Indiana, moved this Court to stay proceedings in the action. On August 27, 1969, the intervening defendants, joined by Governor Whitcomb, separately moved to stay proceedings. These motions were denied on September 4, 1969.

On October 15, 1969, judicial notice was taken of the fact that a special session of the Indiana General Assembly had not been called for the purpose of redistricting and reapportioning the General Assembly. Accordingly, the Court concluded that it would proceed to redistrict the State pursuant to its opinion and order of July 28, 1969.

At an informal conference in chambers held on October 15, 1969, counsel for the parties were informed that the Court wished to invite not only the parties to the action but also the State Committees of the majority and minority parties in the Indiana General Assembly, the legislative leaders of said parties, and the members of the Indiana State Election Board, to submit proposed plans for the Court's consideration.

Pursuant to notice a further conference on October 17, 1969, was held in open court for the purpose of announcing minimal guidelines for submission of proposed plans. The date of November 3, 1969, was fixed as the date by which such plans were to be submitted. Persons desiring to submit plans were ordered to file notice of their intent to do so on or before October 24, 1969. The Court announced that 1960 census data would be used as a basis for redistricting; that single-member districts would be preferred to multi-member districts; and that county and township boundary lines would be crossed in drawing district lines wherever necessary to achieve equality of population in the districts but that the Court would strive to preserve the integrity of county and township lines.

On October 30, 1969, the Court granted persons submitting proposed plans until November 10, 1969, to file objections, if any, to plans proposed by other persons. Defendant Governor Whitcomb on November 3, 1969, moved the Court to modify the order of October 30th by providing that any party to the action might file objections to any of the proposed plans filed by any party or non-party with the Court within ten (10) days after any party received actual notice of the filing of any proposed plan submitted by any party or non-party. The motion was denied on November 4, 1969.

The intervening defendants on November 5, 1969, moved for an extension of time within which to file notice of intent and a proposed plan until November 10, 1969. The motion was granted by an entry of November 6, 1969, and the Court further extended until November 13, 1969, the time within which persons having filed proposed plans could file objections to other plans filed with the Court.

The Court has received the following proposed plans, each preceded by a satisfactory notice of intent:

(1) Plaintiffs' plan for Marion County only;

(2) Plan of Leslie Duvall as Chairman, Senate Legislative Apportionment Committee, for the Indiana Senate only;

(3) Plan of Leslie Duvall as Majority Caucus Chairman, Indiana Senate, for the Indiana Senate only;

(4) Plan of State Senator Robert E. Mahowald, for the Indiana Senate only;

(5) Plan of Frederick T. Bauer, Indiana General Assembly House Minority Leader, and David Rogers, Indiana General Assembly Senate Minority Leader, for both the Indiana House and Senate;

(6) Plan of Richard A. Boehning, Indiana General Assembly House Majority Leader, for the Indiana House only;

(7) Plan of Representative Richard J. Lesniak, for Lake County only; and

(8) Plan of Senator Albert J. LaMere, for Lake County only.

As invited by the Court, several persons filed objections to districting plans submitted by other persons. These objections have been considered and the Court appreciates the diligence of the persons submitting them. The Court having prepared its own plan and the objections having been considered, these objections are considered moot. We reached this conclusion after examination of all plans submitted. With the exception of the plaintiffs' plan and the intervening defendants' plan, all other plans contain such a large deviation between the most populous and least populous districts that they were eliminated from further consideration.

Although the Court has previously indicated that 1960 census statistics should be utilized, several of the objections argue that these statistics are so outdated as to be not credible. The short answer to this objection was given by an earlier three-judge court of this district in considering congressional redistricting: "[T]he Census of 1960 must be tolerated until the next official census in order to maintain relative political stability." *Grills v. Branigin*, 284 F. Supp. 176 (S.D. Ind. 1968).

In districting Marion County, two of the plans submitted received primary consideration, the plan of the plaintiffs, and the plan of the intervening defendants. It is the opinion of the Court that the plaintiffs' plan for districting Marion County more nearly meets the constitutional standards laid down by the Supreme Court as followed by this Court in reaching its opinion of July 28, 1969. We note in the intervening defendants' plan large suburban areas are combined with parts of the Center Township ghetto area. In fact, in seven instances the intervening defendants' plan combines suburban areas with portions of the Center Township inner city area. As we observed in our opinion of July 28, 1969, sophisticated gerrymandering has been soundly condemned. *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed. 2d 110 (1960).

Plaintiffs' districts in Marion County closely follow existing city and township boundary lines and are compact and composed of contiguous territory. Additionally, plaintiffs' House districts approximate mathematical equality of population. The greatest deviation is minus .63 of 1% from the ideal House district in Marion County and the average deviation for all fifteen (15) House districts in Marion County is .26 of 1%. Plaintiffs' plan also protects the legally cognizable racial minority group against dilution of its voting strength. This is also true when the respective House districts are combined for senatorial districts.

The legislature having failed to act, this Court now establishes House and Senate districts for the State of Indiana which in the Court's opinion comply with federal constitutional requirements as set forth in decisions of the United States Supreme Court, and as applied in this Court's opinion and order of July 28, 1969.

The Indiana Election Code provides a 30-day period for declarations of candidacy for nomination to a General Assembly seat; this period begins on February 24, 1970. Furthermore, precinct election boundaries will have to be adjusted in January of 1970 by the election officials to coincide with the boundaries of new legislative districts.

The legislative districting plan prescribed herein sets forth a description of each House district. The plan is based on 1960 census data which results in an ideal House district of 46,625, and an ideal Senate district of 93,250. As indicated to the interested persons at the October 17, 1969, conference, single-member districts have been utilized throughout the state; further, the Court's aim has been for mathematical equality of population in each district. The difficulty of devising 100 compact and contiguous House districts within that framework has in large part precluded preservation of county lines. However, township boundary lines have been followed except in the state's ten metropolitan areas, where the density of population required the division of townships.

For the convenience of the electorate and of the election officials, each Senate district consists of two House districts chosen by numerical sequence. There are 100 House districts and 50 Senate districts. Thus Senate district No. 1 consists of House districts Nos. 1 and 2, and Senate district No. 2 consists of House districts Nos. 3 and 4, and so forth. The House districts are set out in map form for the use of election officials. The Senate districts are described only by designating the combinations of House districts. The accompanying listing indicates the population of each House district and the percentage deviation from the ideal district of 46,625.

Each district is further described by townships, census tracts, blocks or enumeration districts. Where township lines have been followed, the composition of the district is largely self-explanatory. However, where districts have been described by census designations, it has been necessary to convert the description into streetline locations. This conversion has been accomplished by the use of detail maps A through J for the metropolitan areas of Lake

County, South Bend, Fort Wayne, Kokomo, Muncie, Anderson, Marion County, Richmond, Terre Haute, and Evansville.

(See Appendix I for listing of House Districts, Appendix II for listing of Senate Districts, and Map Appendix for District Boundary Lines.)[2]

The conversion to streetline locations was made possible by the assistance and cooperation of the United States Bureau of the Census, Department of Commerce. The Court especially recognizes and credits the Bureau of the Census for its help in providing demographic data to accomplish this redistricting plan. Their information and assistance has made it possible to audit population figures and percentage deviations from the ideal.

In establishing district lines for the metropolitan areas of the state, the Court has taken judicial notice of the 1960 census statistics as to the location of the non-white population. The single-member district plan gives recognition to the cognizable racial minority group whose grievance lead to this litigation.

In reapportioning legislative seats in the General Assembly, the question of how the "holdover" senators shall be treated is presented.

The Constitution of the State of Indiana, Art. 4, Sec. 3, provides that senators are elected for 4-year terms; thus, theoretically half of the members of the Senate, those who were elected in the 1968 general election, would not stand for re-election in 1970. Since the Act under which they were elected has been found unconstitutional, the Court is required to determine what is to become of the remainder of their terms of office. To permit the present terms of incumbent senators to extend beyond the 1970 general election would prevent implementation of the districting plan herein prescribed. Senators elected in 1968 under what has now been declared to be an unconstitutional statute do not have a vested right to serve out the balance of their 4-year terms. *Reynolds v. State,* 233 F. Supp. 323 (W.D. Okla. 1964). Thus the Court has concluded that it will be necessary to fill all fifty senatorial seats in the 1970 election, and that the present terms of all incumbent senators will expire at the time the members of the newly elected legislature take office on January 7, 1971. *Mann v. Davis,* 238 F. Supp. 458 (E.D. Va. 1964), *aff'd* 379 U.S. 694 (1965); *Hughes v. WMCA, Inc.,* 379 U.S. 694 (1965); *Holt v. Richardson,* 238 F. Supp. 468 (D. Haw. 1965); *People ex. rel. Engle v. Kerner,* 33 Ill. 2d 11, 210 N.E.2d 165 (1965).

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[2] The Court acknowledges with thanks the permission granted by the George F. Cram and R. L. Polk Companies to publish and make use of copyrighted maps, Corporate Boundaries, Marion County, Indiana, and Official Arrow City Map, Hammond and Vicinity, Indiana.

The Indiana constitutional provision for staggering the terms of senators, so that one-half of the Senate terms expire every two years, is entirely proper and valid and would be mandatory in a legislatively devised redistricting plan.

However, the plan adopted herein is provisional in nature and probably will be applicable for only the 1970 election and the subsequent 2-year period. This is true since the 1970 census will have been completed in the interim, and the legislature can very well redistrict itself prior to the 1972 election. On the other hand, it is conceivable that the legislature may fail to redistrict before the 1972 election. In such event, all fifty senatorial seats shall be up for election every two years until such time as the legislature properly redistricts itself. It will then properly be the province of the legislature in redistricting to determine which senatorial districts shall elect senators to 4-year terms and which shall elect senators to 2-year terms to reinstate the staggering of terms.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant, Governor Edgar D. Whitcomb, the State Election Board, the Secretary of State of the State of Indiana, and all election officials under the Election Code of Indiana are hereby enjoined from conducting any primary, general or special elections for the offices of Indiana State Senator or Indiana State Representative by the use of the districts and apportionment created by the Indiana Acts of 1965 (2d Spec. Sess.), ch. 5, sec. 3, and ch. 4, sec. 3 (Ind. Ann. Stat. §§ 34-102, 34-104 (Burns Supp. 1968)) for the reason that those statutes are violative of the Constitution of the United States for the reasons given in this opinion and in the Court's opinion and order of July 28, 1969.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Governor Edgar D. Whitcomb, the State Election Board, the Secretary of State, and all election officials under the Election Code of Indiana are hereby mandated to conduct all primary, general and special elections during the year 1970 for the offices of Indiana State Senator or Indiana State Representative in accordance with this judgment and by the use of the districts created and described by this judgment; and this order now constitutes appropriate notice to all of such officials.

The Court retains jurisdiction of this action for the purpose of passing upon any future claims of unconstitutionality made by plaintiffs against any future legislative apportionment adopted by the General Assembly of Indiana by reason of this order, and for such other action in th premises as may be necessary.

S/ OTTO KERNER
JUDGE
United States Court of Appeals
for the Seventh Circuit

S/ WILLIAM E. STECKLER
JUDGE
United States District Court

S/ JAMES E. NOLAND
JUDGE
United States District Court

APPENDIX I

HOUSE DISTRICTS

District No.	Description	Total Population	Percentage of Deviation
1	Posey County: All Vanderburgh County: Tracts 29, 30, 31, 32 V6, V7 & V8 Tract 28: Blocks 4-13, 19-30, 37-44, 50-57, 64-71, 76-79, and 80 split*	46,966	+.73%
2	Gibson County: Johnson Township Vanderburgh County: Tracts 4, 5, 33, 34, 35, 38, V3, V4, V9, V10 Tract 2: Blocks 1-33, 39-49, 54-75 Tract 3: Blocks 1-3, 11-22 Tract 22: Block 1 Tract 37: Blocks 1-45, 49-52, 61-67	46,711	+.18%
3	Vanderburgh County: Tracts 1, 18, 19, 20, 21, 23, 24, 25, 26, 27 Tract 2: Blocks 34-38, 50-53 Tract 3: Blocks 4-10, 23-35, 38, 39 Tract 7: Blocks 1-14 Tract 14: Blocks 1-8 Tract 15: Blocks 1-16, 21-25 Tract 16: Blocks 1-32 Tract 17: Blocks 1-27, 9 split* Tract 22: Blocks 2-61 Tract 28: Blocks 1-3, 14-18, 31-36, 45-49, 58-63, 72-75, 81, 80 split*	46,735	+.24%
4	Vanderburgh County: Tracts 6, 8, 9, 10, 11, 12, 13, V1, 36 Tract 3: Blocks 36, 37, 40-52 Tract 7: Blocks 15-42 Tract 14: Blocks 9-28 Tract 15: Blocks 17-20, 26-48 Tract 16: Blocks 33-58 Tract 17: Blocks 28-40, 9 split* Tract 37: Blocks 46-48, 53-60	46,859	+.50%

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*Block, contains no population—is split into two (2) districts by a projected line.

District No.	Description	Total Population	Percentage of Deviation
5	Dubois County: Bainbridge, Boone & Madison Townships Gibson County: Center, Columbia, Montgomery, Patoka, Union, Wabash & Washington Townships Pike County: Clay, Jefferson, Logan, Madison, Marion, Patoka & Washington Townships	46,999	+.80%
6	Warrick County: All Dubois County: Cass & Patoka Townships Gibson County: Barton Township Pike County: Lockhart & Monroe Townships Spencer County: Carter, Clay, Grass, Hammond, Jackson, Luce & Ohio Townships	46,857	+.50%
7	Perry County: All Crawford County: Johnson, Patoka & Union Townships Dubois County: Columbia, Ferdinand, Hall, Harbison, Jackson, Jefferson & Marion Townships Orange County: French Lick, Greenfield, Jackson, Northeast, Northwest, Orangeville, Orleans & Paoli Townships Spencer County: Harrison & Huff Townships	46,514	—.24%
8	Harrison County: All Crawford County: Boone, Jennings, Liberty, Ohio, Sterling & Whiskey Run Townships Floyd County: Georgetown & Greenville Townships Orange County: Southeast & Stampers Creek Townships Washington County: Brown, Howard, Jackson, Monroe, Pierce, Posey, Madison, Vernon, Jefferson & Washington Townships	46,655	+.06%

District No.	Description	Total Population	Percentage of Deviation
9	Floyd County: Franklin, Lafayette & New Albany Townships	46,314	—.67%
10	Clark County: Carr, Jeffersonville, Silver Creek, Union & Wood Townships	46,634	+.02%
11	Scott County: All Clark County: Bethlehem, Charlestown, Monroe, Oregon, Owen, Utica & Washington Townships Jackson County: Grassy Fork & Vernon Townships Jefferson County: Graham, Hanover, Lancaster, Republican, Saluda & Smyrna Townships Jennings County: Marion & Montgomery Townships Washington County: Franklin, Gibson & Polk Townships	46,903	+.60%
12	Ohio County: All Switzerland County: All Dearborn County: Caesar Creek, Center, Clay, Hogan, Sparta & Washington Townships Jefferson County: Madison, Milton, Monroe & Shelby Townships Ripley County: Brown, Center, Johnson, Shelby & Washington Townships	46,491	—.29%
13	Bartholomew County: Clay, Clifty, Rock Creek, Sand Creek & Wayne Townships Decatur County: Jackson, Marion & Sand Creek Townships Jackson County: Jackson, Redding & Washington Townships Jennings County: Bigger, Campbell, Center, Columbia, Geneva, Lovett, Sand Creek, Spencer & Vernon Townships Ripley County: Otter Creek Township	46,444	—.39%

District No.	Description	Total Population	Percentage of Deviation
14	Bartholomew County: Columbus, Flat Rock, German & Haw Creek Townships in addition to Unorganized Territory Decatur County: Clay Township Johnson County: Blue River Township Shelby County: Jackson, Noble & Washington Townships	46,455	—.37%
15	Brown County: All Bartholomew County: Harrison, Jackson & Ohio Townships Jackson County: Brownstown, Carr, Driftwood, Hamilton, Owen, Pershing & Salt Creek Townships Lawrence County: Bono, Guthrie, Marshall, Pleasant Run & Shawswick Townships	46,331	—.63%
16	Martin County: All Daviess County: Barr, Harrison, Madison, Reeve, Van Buren, Veale & Washington Townships Greene County: Jackson & Taylor Townships Lawrence County: Indian Creek, Marion, Perry & Spice Valley Townships	47,045	+.90%
17	Knox County: All Daviess County: Bogard, Elmore & Steele Townships Gibson County: White River Township	46,891	+.57%
18	Sullivan County: All Clay County: Cass, Harrison, Lewis, Perry, Posey, Jackson, Sugar Ridge & Washington Townships Owen County: Marion Township Vigo County: Honey Creek, Linton, Pierson, Prairie Creek, Prairieton & Riley Townships	46,849	+.48%

District No.	Description	Total Population	Percentage of Deviation
19	Greene County: Beech Creek, Cass, Center, Fairplay, Grant, Highland, Jefferson, Richland, Smith, Stafford, Stockton, Wright & Washington Townships Monroe County: Bean Blossom, Clear Creek, Indian Creek, Polk, Richland, Salt Creek, Washington & Van Buren Townships Owen County: Clay, Jefferson, Franklin, Lafayette, Montgomery, Morgan, Washington & Wayne Townships	46,366	—.56%
20	Monroe County: Benton, Bloomington & Perry Townships	46,402	—.48%
21	Hendricks County: Guilford, Liberty & Washington Townships Morgan County: Adams, Ashland Baker, Brown, Greene, Gregg, Jefferson, Monroe, Ray & Washington Townships Owen County: Harrison & Taylor Townships	46,266	—.77%
22	Hendricks County: Brown, Center, Clay, Eel River, Franklin, Lincoln, Marion, Middle & Union Townships Owen County: Jackson & Jennings Townships Putnam County: Clinton, Cloverdale, Floyd, Franklin, Greencastle Jackson, Jefferson, Madison, Marion, Monroe, Warren & Washington Townships	46,255	—.79%
23	Vigo County: Lost Creek Township Harrison Township: Tracts E & G Tract D: Blocks 1-223, 224 split* Tract F: Blocks 1-207, 209-220 Tract B: Blocks 243-293	46,563	—.13%

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* This block is split at the Township Line between Harrison and Lost Creek Townships.

District No.	Description	Total Population	Percentage of Deviation
24	Vigo County: Fayette, Otter Creek & Sugar Creek Townships Harrison Township: Tracts A & C Tract B: Blocks 1-242	46,362	—.56%
25	Parke County: All Clay County: Brazil, Dick Johnson & Van Buren Townships Vermillion County: Clinton, Eugene, Helt & Vermillion Townships Vigo County: Nevins Township	46,159	—.99%
26	Montgomery County: All Fountain County: Cain, Fulton, Jackson, Mill Creek, Troy, Van Buren & Wabash Townships Putnam County: Russell Township Vermillion County: Highland Township Warren County: Kent & Mound Townships	46,506	—.26%
27	Clinton County: All Carroll County: Burlington & Democrat Townships Howard County: Honey Creek & Monroe Townships Tippecanoe County: Lauramie, Randolph, Sheffield & Wea Townships Tipton County: Jefferson & Prairie Townships	46,832	+.44%
28	Carroll County: Clay Township Tippecanoe County: Fairfield & Perry Townships	46,346	—.60%
29	Benton County: Bolivar Township Fountain County: Davis, Logan, Richland & Shawnee Townships Tippecanoe County: Jackson, Shelby, Union, Wabash & Wayne Townships Warren County: Adams, Jordan, Liberty, Medina, Pike, Pine, Prairie, Steuben, Warren & Washington Townships	46,467	—.34%

istrict No.	Description	Total Population	Percentage of Deviation
30	Jasper County: All Newton County: All Benton County: Center, Gilboa, Grant, Hickory Grove, Oak Grove, Parish Grove, Pine, Richland, Union & York Townships Pulaski County: Cass & White Post Townships Starke County: Railroad Township White County: Princeton, Round Grove & West Point Townships	46,788	+.35%
31	LaPorte County: Cass, Center, Clinton, Dewey, Hanna, New Durham, Noble & Scipio Townships Porter County: Boone, Jackson, Morgan, Pleasant, Porter, Union & Washington Townships	46,845	+.47%
32	Lake County: Cedar Creek, Center, Eagle Creek, Hanover, Ross, West Creek & Winfield Townships	46,779	+.33%
33	Lake County: Tracts SJT60, NOT53, HMC52 Tract HMC49: Blocks 37-67 Tract HMC51: Blocks 42, 45, 166	46,641	+.03%
34	Lake County: Tracts CAT54 & CAT55, Tract GAC6: Blocks 426-455, 533-539 Tract GAC26: Blocks 44-47, 58-65, 69-79, 84-108, 111-149, 152-178, 179 Tract GAC27: Blocks 19-97	46,646	+.04%
35	Lake County: Tracts HMC42, HMC43, HMC44, HMC45, HMC50 Tract HMC46: Blocks 1-38, 47-52†, 61-68, 73 Tract HMC49: Blocks 1-36 Tract HMC51: Blocks 2-6, 11-17, 19-26 Tract ECC37: Blocks 1-67, 76-80	46,602	—.05%

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†There are not any blocks in Tract HMC46 that are numbered 45 or 46. Therefore, this series of blocks starts with number 47.

District No.	Description	Total Population	Percentage of Deviation
36	Lake County: Tracts HMC40, HMC41, ECC28, ECC28cv, ECC35, NOT38, NOT39, ECC29cv. Tract ECC29: Blocks 1-13, 16-55 Tract ECC36: Blocks 1-3, 7-20, 28-40, 44 split* Tract ECC37: Blocks 68-75	46,530	—.20%
37	Lake County: Tracts HMC47 & HMC48 Tract HMC46: Blocks 39-44, 53-60 69-72 Tract HMC51: Blocks 1, 18, 27-41, 46-165, 167-215	46,772	+.31%
38	Lake County: Tracts ECC30, ECC31, ECC32, ECC33 & ECC34 Tract ECC29: Blocks 14-15 Tract ECC36: Blocks 4-6, 21-27, 41-43, 44 split*, & 45 Tract GAC1: Blocks 34-40 Tract GCA6: Blocks 1-80, 85-130, 132-179, 182-231, 234, 239, 240-425, 460-532	46,563	—.13%
39	Lake County: Tracts GAC18, GAC19, GAC20, GAC23 and GAC25 Tract GAC16: Blocks 39-45 Tract GAC21: Blocks 10-21, 28-31 Tract GAC27: Blocks 3-18	46,601	—.05%
40	Lake County: Tracts GAC14, GAC15, GAC17, GAC22 & GAC24 Tract GAC16: Blocks 1-38 Tract GAC21: Blocks 1-9, 22-27, 32-34 Tract GAC26: Blocks 1-43 Tract GAC27: Blocks 102	46,652	+.06%

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* This block, containing no population, is split into two (2) districts by a projected line.

District No.	Description	Total Population	Percentage of Deviation
41	Lake County: Tracts GAC2, GAC3, GAC4, GAC5, GAC7, GAC8, GAC9, GAC10, GAC11, & GAC12 Tract GAC1: Blocks, 1-33, 41-188 Tract GAC6: Blocks 81-84, 131, 180-181, 232-233, 235-238, 456-459 Tract GAC13: Block 1	46,824	+.43%
42	Lake County: Tracts HOT56, HOT57, & HOT58 Tract GAC13: Blocks 2-50 Tract GAC26: Blocks 48-57, 66-68, 80-83, 109-110, 150-151	46,659	+.07%
43	Porter County: Center, Liberty, Portage & Westchester Townships	46,484	—.30%
44	LaPorte County: Cool Spring & Michigan Townships Porter County: Pine Township	47,081	+.98%
45	LaPorte County: Galena, Hudson, Johnson, Kankakee, Lincoln, Pleasant, Prairie, Springfield, Union, Washington & Wills Townships Marshall County: Center, North, Polk & West Townships St. Joseph County: Olive Township Starke County: California, Center, Davis, Jackson, Oregon & Washington Townships	46,621	—.01%
46	St. Joseph County: Tracts C109, C111, C119-C123, 22, 24, 26-28, 34 Tract 20: Blocks 37-40	46,566	—.13%
47	St. Joseph County: Tracts: C110, 1-7, 19, 21, 23, 25 Tract 18: Blocks 2-9, 15-21, 26-29, 35-38 Tract 20: Blocks 1-36, 41-45	46,648	+.05%
48	St. Joseph County: Tracts C112, C113, 8-13, 17 Tract 18: Blocks 1, 10-14, 22-25, 30-34, 39-42	46,584	—.09%

District No.	Description	Total Population	Percentage of Deviation
49	St. Joseph County: Tracts C117, C118, 14, 16, 29-33, 35 Tract 15: Blocks 1-49, 65-69	46,591	—.07%
50	St. Joseph County Tracts M101, M102, M103, M104, M-105, M106, M107, C114, C115, C116 Tract 15: Blocks 50-64	46,876	+.54%
51	Elkhart County: Baugo, Cleveland, Elkhart, Harrison, Jackson, Olive & Osolo Townships	46,464	—.35%
52	Elkhart County: Concord, Jefferson & Washington Townships	46,971	+.74%
53	LaGrange County: All Elkhart County: Clinton, Middlebury & York Townships Noble County: Albion, Allen, Elkhart, Orange, Perry, Sparta, Wayne & York Townships and Jefferson Township	46,165	—.99%
54	DeKalb County: All Steuben County: All Noble County: Swan Township	46,864	+.51%
55	Allen County: Tracts C101, C102, C103, C108-C113, C118, C119 Tract 1: Block 51 Tract 33: Block 1	47,040	+.89%
56	Allen County: Tracts 2-10, 34, 35 Tract 1: Blocks 1-50, 52 Tract 33: Blocks 24-51	47,047	+.91%
57	Allen County: Tracts 11-21 Tract 25: Blocks 3-7 Tract 27: Blocks 1-6	46,694	+.15%
58	Allen County: Tracts 26, 28-32, 23, 40 Tract 25: Blocks 1, 2, 8-45 Tract 27: Blocks 7-62 Tract 36: Blocks 1-6, 9-18	46,778	+.33%

District No.	Description	Total Population	Percentage of Deviation
59	Allen County: Tracts 22, 24, 37-39, C104-C107 C114-C117 Tract 33, Blocks 2-23, 52-55 Tract 36: Blocks 7, 8, 19-37 Huntington County: Jackson Township	46,902	+.59%
60	Whitley County: All Huntington County: Clear Creek, Huntington & Warren Townships Kosciusko County: Monroe Township Noble County: Green, Noble & Washington Townships	46,626	+.01%
61	Elkhart County: Benton, Locke & Union Townships Kosciusko County: Jefferson, Plain, Scott, Tippecanoe, Turkey Creek, Van Buren, Washington & Wayne Townships Marshall County: Bourbon & German Townships St. Joseph County: Madison Township	47,091	+.99%
62	Fulton County: Henry & New Castle Townships Kosciusko County: Clay, Etna, Franklin, Harrison, Jackson, Lake, Prairie & Seward Townships Marshall County: Tippecanoe Township Miami County: Allen, Erie, Jefferson, Perry, Peru & Richmond Townships Wabash County: Chester, Paw Paw & Pleasant Townships	46,505	—.26%
63	Carroll County: Adams, Jefferson, Rock Creek & Tippecanoe Townships Fulton County: Aubbeenaubbee & Richland Townships Marshall County: Union, Green & Walnut Townships Pulaski County: Beaver, Franklin, Harrison, Indian Creek, Jefferson,	46,461	—35.%

District No.	Description	Total Population	Percentage of Deviation
	Monroe, Rich Grove, Salem & Tippecanoe Townships Starke County: North Bend & Wayne Townships Tippecanoe County: Tippecanoe Township White County: Big Creek, Cass, Honey Creek, Jackson, Liberty, Lincoln, Monon, Prairie & Union Townships		
64	Cass County: Adams, Bethlehem, Boone, Clay, Clinton, Eel, Harrison, Jefferson & Noble Townships Fulton County: Liberty, Rochester, Union & Wayne Townships Miami County: Union Township Pulaski County: Van Buren Township	46,602	—.05%
65	Carroll County: Carrollton, Deer Creek, Jackson, Liberty, Madison, Monroe & Washington Townships Cass County: Deer Creek, Jackson, Miami, Tipton & Washington Townships Howard County: Clay, Ervin, Harrison, Howard, Jackson, Liberty & Union Townships That part of Center Township which is outside the City Limits of the City of Kokomo, plus Enumeration District 37P Miami County: Clay, Deer Creek, Harrison & Pipe Creek Townships Tippecanoe County: Washington Township	46,488	—.29%
66	Howard County: The City of Kokomo, less Enumeration District 37P	46,896	+.58%
67	Hancock County: Vernon Township Hamilton County: Fall Creek, Jackson, Noblesville, Wayne & White River Townships	46,483	—.31%

District No.	Description	Total Population	Percentage of Deviation
	Howard County: Taylor Township Madison County: Duck Creek, Green & Jackson Townships Tipton County: Cicero, Liberty, Madison & Wildcat Townships		
68	Boone County: All Hamilton County: Adams, Clay, Delaware & Washington Townships	46,891	+.57%
69	Grant County: Monroe, Richard, Sims, Van Buren & Washington Townships Huntington County: Dallas, Jefferson, Lancaster, Polk, Rock Creek, Salamonie & Wayne Townships Miami County: Butler, Jackson & Washington Townships Wabash County: Lagro, Liberty, Noble & Waltz Townships	46,666	+.09%
70	Grant County: Center, Franklin & Pleasant Townships	46,407	—.47%
71	Wells County: All Adams County: Blue Creek, French, Jefferson, Kirkland, Monroe, Preble, Root, St. Mary's, Union, Wabash & Washington Townships Huntington County: Union Township	46,218	—.87%
72	Blackford County: All Adams County: Hartford Township Delaware County: Delaware, Niles & Union Townships Grant County: Jefferson Township Jay County: Bear Creek, Greene, Jackson, Knox, Noble, Penn, Richland, Wabash & Wayne Townships	46,299	—.70%
73	Grant County: Fairmount, Green, Liberty & Mill Townships Madison County: Boone, Monroe, Pipe Creek, Richland & Van Buren Townships	47,028	+.86%
74	Delaware County: Hamilton, Harrison, Mount Pleasant & Washington Townships	46,646	+.05%

District No.	Description	Total Population	Percentage of Deviation
	Center Township: Tracts 7-11, 17-20 Tract 2: Blocks 1-11		
75	Delaware County: Salem Township Madison County: Adams, Fall Creek, Lafayette, Stony Creek & Union Townships That part of Anderson Township which is outside the City Limits of the City of Anderson, and excluding Enumeration District 14P	47,056	+.92%
76	Madison County: That part of the City of Anderson which is within the Township of Anderson, plus Enumeration District 14P	47,066	+.95%
77	Jay County: Jefferson, Madison & Pike Townships Randolph County: Franklin, Green, Greensford, Jackson, Monroe, Union, Ward, Washington, Wayne & White River Townships Wayne County: Abington, Center, Clay, Dalton, Franklin, Green, New Garden, Perry & Webster Townships That part of Wayne Township outside the City Limits of the City of Richmond, less Enumeration District 11NA, Enumeration District 11NB, and Enumeration District 14	46,730	+.22%
78	Wayne County: The City of Richmond, plus Enumeration District 11NA, Enumeration District 11NB and Enumeration District 14 47(R not included) (Richmond Airport)	46,358	—.57%
79	Delaware County: Center Township (Pt. of Muncie) Tracts 1, 3-6, 12-16, 21 Tract 2: Blocks 12-81	46,865	+.52%
80	Delaware County: Liberty, Monroe & Perry Townships	46,550	—.16%

District No.	Description	Total Population	Percentage of Deviation
	Henry County: Blue River, Fall Creek, Harrison, Henry, Jefferson, Liberty, Prairie & Stony Creek Townships Randolph County: Stoney Creek Township		
81	Fayette County: All Henry County: Dudley Township Rush County: Noble, Richland, Union & Washington Townships Union County: Brownsville, Center, Harrison, Liberty & Union Townships Wayne County: Boston, Harrison, Jackson, Jefferson & Washington Townships (Including 47R)	46,173	—.97%
82	Franklin County: All Dearborn County: Harrison, Jackson, Kelso, Lawrenceburg, Logan, Manchester, Miller & York Townships Ripley County: Adams, Delaware, Franklin, Jackson & Laughery Townships Union County: Harmony Township	46,541	—.18%
83	Decatur County: Adams, Clinton, Fugit, Salt Creek & Washington Townships Hancock County: Blue River, Brown, Green & Jackson Townships Henry County: Franklin, Greensboro, Spiceland & Wayne Townships Rush County: Anderson, Center, Jackson, Orange, Posey, Ripley, Rushville & Walker Townships Shelby County: Union Township	46,445	—.39%
84	Hancock County: Buck Creek, Center Sugar Creek & Brandywine Townships Shelby County: Addison, Brandywine, Hanover, Hendricks, Liberty, Marion, Moral, Shelby, Sugar Creek & Van Buren Townships	46,426	—.43%
85	Johnson County: Clark, Franklin, Hensley, Needham, Nineveh, Pleasant, Union & White River Townships	46,959	+.72%

District No.	Description	Total Population	Percentage of Deviation
	Morgan County: Clay, Jackson, Madison & Harrison Townships		
86	Marion County: Tract 420-425, 427, 701-703, 801 Tract 415: Blocks 23-25 Tract 426: Blocks 10-15, 18, 19, 22-62	46,456	—.36%
87	Marion County: Tracts 802-812, 903, 904	46,486	—.30%
88	Marion County: Tracts 605, 607-616, 901, 902 Enumeration Districts 140P, 141S, 141T, 142N, 142P, 143R, 144, 145N	46,460	—.35%
89	Marion County: Tracts 301-310, 602-604 Tract 601: Blocks 42, 43, 51, 58, 59 Enumeration Districts 140R, 140S	46,333	—.63%
90	Marion County: Tracts 207, 212-218, 224-227 Towns of Crow's Nest & Rocky Ripple Enumeration District 33N Tract 205: Block 1 Tract 206: Blocks 1, 2	46,582	—.09%
91	Marion County: Tracts 201-204, 209-210, 101-103, 404, 405 Tract 205 (that area outside City of Indianapolis) Tract 206 (that area outside City of Indianapolis) Tract 211 (less Towns of Rocky Ripple & Crow's Nest) Tract 403: Blocks 1-8, 29-31 Enumeration Districts 31P, 32N, 32P, 32R, 31S	46,602	—.05%
92	Marion County: Tracts 401, 402, 406-412, 417-419 Tract 403: Blocks 9-28, 32-38 & balance of tract outside City Limits of Indianapolis	46,612	—.03%

District No.	Description	Total Population	Percentage of Deviation
93	Marion County: Tracts 560-563, 566-570, 578-581 Tract 564: Blocks 27-41 Tract 565: Blocks 7-33	46,606	—.04%
94	Marion County: Tracts 413, 414, 416, 538-542 Tract 415: Blocks 1-22 Tract 426: Blocks 1-9, 16, 17, 20, 21 Tract 534: Blocks 36, 37, 45-47, 54 Tract 535: Blocks 5, 6, 8-64 Tract 537: Blocks 13-38 Tract 543: Blocks 1-49, 51-61, 65-76, 80-84 & 85 Tract 564: Blocks 1-26, 42 Tract 565: Blocks 1-6	46,524	—.22%
95	Marion County: Tract 559: 571-577 Tract 555: Blocks 40-71 Tract 556: Blocks 35-48 Tract 557: Blocks 5-12, 14, 15, 19-31 Tract 558: Blocks 12-30, 32, 33	46,426	—.43%
96	Marion County: Tracts 544-554 Tract 543: Blocks 50, 62-64, 77-79 Tract 555: Blocks 1-39 Tract 556: Blocks 1-34 Tract 557: Blocks 1-4, 13, 16-18 Tract 558: Blocks 1-11, 31	46,561	—.14%
97	Marion County: Tracts 512-516, 533, 536 Tract 501: Blocks 8-47 Tract 509: Blocks 23-32 Tract 517: Blocks 16, 17, 36-39, 53-56 Tract 532: Blocks 5-10, 19-24 32-37, 46-51, 60-65 Tract 534: Blocks 1-35, 38-44, 48-53 Tract 535: Blocks 1-4, 7 Tract 537: Blocks 1-12	46,560	—.14%
98	Marion County: Tracts 219-223, 502-504, 510, 511 Tract 501: Blocks 1-7	46,572	—.11%

District No.	Description	Total Population	Percentage of Deviation
	Tract 505: Blocks 15, 39, 40 Tract 508: Blocks 10-19, 33-38, 44 Tract 509: Blocks 1-22		
99	Marion County: Tracts 518-520, 527-531 Tract 517: Blocks 1-15, 18-35, 40-52, 57-63 Tract 521: Blocks 16-23, 33-42 Tract 532: Blocks 1-4, 11-18, 25-31, 38-45, 52-59, 66-69	46,412	—.46%
100	Marion County: Tracts 506, 507, 522-526 Tract 505: Blocks 1-14, 16-38, 41-51 Tract 508: Blocks 1-9, 20-32, 39-43 Tract 521: Blocks 1-15, 24-32, 43-47 Tract 601: Blocks 1-41, 44-50, 52-57, 60-79 Tract 601: Outside Indianapolis City Limits	46,375	—.54%

APPENDIX II

SENATE DISTRICTS

Number	Consists of House Districts
1	1 and 2
2	3 and 4
3	5 and 6
4	7 and 8
5	9 and 10
6	11 and 12
7	13 and 14
8	15 and 16
9	17 and 18
10	19 and 20
11	21 and 22
12	23 and 24
13	25 and 26
14	27 and 28
15	29 and 30
16	31 and 32
17	33 and 34
18	35 and 36
19	37 and 38
20	39 and 40
21	41 and 42
22	43 and 44
23	45 and 46
24	47 and 48
25	49 and 50
26	51 and 52
27	53 and 54
28	55 and 56
29	57 and 58
30	59 and 60
31	61 and 62

Number	Consists of House Districts
32	63 and 64
33	65 and 66
34	67 and 68
35	69 and 70
36	71 and 72
37	73 and 74
38	75 and 76
39	77 and 78
40	79 and 80
41	81 and 82
42	83 and 84
43	85 and 86
44	87 and 88
45	89 and 90
46	91 and 92
47	93 and 94
48	95 and 96
49	97 and 98
50	99 and 100

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1198

EDGAR D. WHITCOMB, Governor of the State of Indiana
Appellant,

—v—

PATRICK CHAVIS, ET AL.

Feb. 2, 1970. The emergency application for a stay of the United States District Court for the Southern District of Indiana presented to Mr. Justice Marshall, and by him referred to the Court, is granted pending the timely filing and disposition of an appeal.

Supreme Court of the United States

October Term, 1969

No. 1198

Edgar D. Whitcomb, Governor of the State of Indiana
Appellant,

—v—

Patrick Chavis, et al.

Feb. 6, 1970. The emergency motion to vacate or modify the stay order of February 2, 1970, is denied. The motion to advance is denied without prejudice to its renewal following the filing of the statement as to jurisdiction.

MR. Justice DOUGLAS dissenting from the denial of the motion to vacate or modify the stay order of February 2, 1970:

After a trial on June 17 and 18, 1969, a three-judge District Court entered an order on July 28, 1969, in which it held the multi-member districting provisions of the present Indiana apportionment statutes unconstitutional as they applied to Marion County, Indiana. The State was given until October 1, 1969, to enact statutes redistricting the State so as to correct the constitutional infirmity. Upon the State's failure to enact such statutes, the District Court, on December 15, 1969, entered an order establishing legislative districts in the State. This Court, on February 2, 1970, granted a stay of the District Court's December 15 order pending the filing and disposition of an appeal from that order.

The appellees have now filed a motion to vacate the stay. I would grant the motion. The constitutionality of the present Indiana apportionment scheme was thoroughly briefed and argued in the three-judge District Court below. There is no reason to disturb the order of that court pending the disposition of the appeal by this Court. The date for the commencement of filing for the November 1970 election to the General Assembly is February 24, 1970. The State contends that without a stay it will be forced to conduct the forthcoming election under the reapportionment plan of the District Court. By granting the stay, however, this Court has equally forced the appellees to go through the election under the present scheme which was held unconstitutional by the District Court. Under these circumstances, I see no reason to stay the order of the District Court.

Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 735 and 1198

EDGAR D. WHITCOMB, Governor of the State of Indiana
Appellant,

—v—

PATRICK CHAVIS, ET AL.

No. 761

WILLIAM D. RUCKELSHAUS

—v—

PATRICK CHAVIS, ET AL.

March 16, 1970. In these cases probable jurisdiction is noted. These cases are consolidated and a total of one and one half hours is allotted for oral argument.

Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 735 and 1198

EDGAR D. WHITCOMB, Governor of the State of Indiana
Appellant,

—v—

PATRICK CHAVIS, ET AL.

No. 761

WILLIAM D. RUCKELSHAUS

—v—

PATRICK CHAVIS, ET AL.

March 23, 1970. The order of the Court of March 16, 1970, is revoked. In No. 1198 probable jurisdiction is noted and the case is placed on the summary calendar.

INDIANA APPORTIONMENT ACT OF 1965

Chapter 4—The Senate

SECTION 1. It is hereby declared the intent of the members of the Ninety-fourth Indiana General Assembly to adopt and to incorporate in this act by reference the official report of the United States federal decennial census taken in the year 1960 as an honest, true, correct and complete enumeration of the male and female inhabitants of the State of Indiana over the age of twenty-one (21) years; and upon such report is based a legal and valid apportionment of the number of Senators among the several counties of the state pursuant to the provisions of Article 4, Section 5, of the Constitution of the State of Indiana.

It is the further intent of the Ninety-fourth Indiana General Assembly to adhere to the United States Constitution and especially the 14th Amendment thereof, in this apportionment; and in recognition thereof, this apportionment is based upon equal representation among the citizens of the State of Indiana over the age of twenty-one (21) years as reasonably as may be accomplished within the requirements of law otherwise existing. It is the intent of this act that individual counties be joined together with one or more other individual counties to create senatorial districts for the election of one or more Senators only when such joinder is required in order to accomplish the population requirements for equal representation under the Constitution of the United States of America and the Constitution of the State of Indiana.

SEC. 2. For the Ninety-fifth Indiana General Assembly and thereafter the Senate shall consist of fifty (50) members.

SEC. 3. Senators shall be elected from districts, comprised of one (1) or more counties and having one (1) or more senators, as follows:

First District—Lake County: five (5) senators, three (3) to be elected in 1966, two (2) for four-year terms, and one (1) for a two-year term;

Second District—Porter, Jasper and Newton Counties: one (1) senator, one (1) to be elected in 1966;

Third District—LaPorte County: one (1) senator;

Fourth District—St. Joseph and Marshall Counties: three (3) senators, one (1) to be elected in 1966;

Fifth District—Elkhart County: one (1) senator;

Sixth District—Kosciusko, Noble, Lagrange and Steuben Counties: one (1) senator;

Seventh District—Allen, DeKalb and Adams Counties: three (3) senators, two (2) to be elected in 1966;

Eighth District—Huntington, Wabash and Whitley Counties: one (1) senator, one (1) to be elected in 1966;

Ninth District—Cass, Fulton and Miami Counties: one (1) senator;

Tenth District—Starke, Pulaski, White, Carroll, Benton and Warren Counties: one (1) senator;

Eleventh District—Tippecanoe County: one (1) senator, one (1) to be elected in 1966;

Twelfth District—Howard and Tipton Counties: one (1) senator, one (1) to be elected 1966;

Thirteenth District—Grant and Blackford Counties: one (1) senator, one (1) to be elected in 1966;

Fourteenth District—Delaware, Jay, Randolph and Wells Counties: two (2) senators, one (1) to be elected in 1966;

Fifteenth District—Madison, Henry and Hancock Counties: two (2) senators, one (1) to be elected in 1966;

Sixteenth District—Boone, Clinton and Hamilton Counties: one (1) senator, one (1) to be elected in 1966;

Seventeenth District—Montgomery, Putnam, Parke and Fountain Counties: one (1) senator, one (1) to be elected in 1966;

Eighteenth District--Hendricks, Owens and Morgan Counties: one (1) senator;

Nineteenth District—Marion County: eight (8) senators, two (2) to be elected in 1966;

Twentieth District—Wayne and Union Counties: one (1) senator, one (1) to be elected in 1966;

Twenty-first District—Rush, Decatur, Fayette and Shelby Counties: one (1) senator;

Twenty-second District — Johnson and Bartholomew Counties: one (1) senator, one (1) to be elected in 1966;

Twenty-third District—Vigo, Clay, Sullivan and Vermillion Counties: two (2) senators, one (1) to be elected in 1966;

Twenty-fourth District—Monroe, Brown and Greene Counties: one (1) senator;

Twenty-fifth District—Knox, Gibson and Pike Counties: one (1) senator, one (1) to be elected in 1966;

Twenty-sixth District—Vanderburgh and Posey Counties: two (2) senators, one (1) to be elected in 1966;

Twenty-seventh District — Dubois, Daviess, Martin, Spencer and Warrick Counties: one (1) senator, one (1) to be elected in 1966;

Twenty-eighth District—Jackson, Lawrence, Orange and Washington Counties: one (1) senator;

Twenty-ninth District—Harrison, Floyd, Crawford and Perry Counties: one (1) senator, one (1) to be elected in 1966;

Thirtieth District—Clark, Jefferson and Scott Counties: one (1) senator, one (1) to be elected in 1966;

Thirty-first District—Dearborn, Franklin, Jennings, Ripley, Ohio and Switzerland Counties: one (1) senator, one (1) to be elected in 1966.

SEC. 4. The Senators elected in the general election of 1964 for full 4-year terms shall continue to hold office until the terms for which they were elected have expired by limitation.

Chapter 5—The House of Representatives

SECTION 1. In adopting this Act, it has been the purpose and intent of the General Assembly to conform as nearly as possible with the requirement of the Fourteenth Amendment to the Constitution of the United States that the vote of each citizen be as nearly equal in weight as possible to that of every other citizen, while preserving the historic integrity of the counties as a unit of government. Counties have been joined in districts only where necessary to conform to this mandate of the Constitution of the United States. In joining counties together, it has been the intent of the General Assembly wherever possible to group in a single district counties having similar economic, social and geographic interests. Particular effort has been made wherever possible to avoid the grouping of small, rural counties with large urban counties. Where such groupings have been unavoidable, it has been the purpose and intent of the General Assembly to append to the larger county those smaller counties whose residents, in large numbers, work and trade in the larger county, have access to and enjoy the news media of the larger county and have a regular and close relationship with the citizens of the larger county.

It is the further intent of the members of the 94th Indiana General Assembly (Special Session) to adopt and to incorporate in this Act by reference the official report of the United States federal decennial census taken in the year 1960 as an honest, true, correct and complete enumeration of the male and female inhabitants of the State of Indiana over the age of twenty-one (21) years; and upon such report is based a legal and valid apportionment of the number of representatives among the several counties of the state pursuant to the provisions of Article 4, Section 5, of the Constitution of the State of Indiana.

SEC. 2. For the Ninety-fifth Indiana General Assembly and thereafter the House of Representatives shall consist of one hundred (100) members.

SEC. 3. Representatives shall be elected from districts comprised of one (1) or more counties and having one (1) or more representatives, as follows:

First District Lake County: eleven (11) representatives;

Second District Porter, Jasper and Pulaski Counties: two (2) representatives;

Third District LaPorte County: two (2) representatives;

Fourth District St. Joseph County: five (5) representatives;

Fifth District Elkhart, LaGrange and Noble Counties: three (3) representatives;

Sixth District Steuben and DeKalb Counties: one (1) representative;

Seventh District Newton, Benton and White Counties: one (1) representative;

Eighth District Starke and Marshall Counties: one (1) representative;

Ninth District Fulton, Kosciusko, Whitley, Huntington and Wabash Counties: three (3) representatives;

Tenth District Allen County: five (5) representatives;

Eleventh District Wells and Adams Counties: one (1) representative;

Twelfth District Carroll, Cass and Miami Counties: two (2) representatives;

Thirteenth District Warren, Fountain and Vermillion Counties: one (1) representative;

Fourteenth District Tippecanoe County: two (2) representatives;

Fifteenth District Montgomery and Parke Counties: one (1) representative;

Sixteenth District Clinton, Boone and Hamilton Counties; two (2) representatives;

Seventeenth District Howard and Tipton Counties: two (2) representatives;

Eighteenth District Grant and Blackford Counties: two (2) representatives;

Nineteenth District Madison County: three (3) representatives;

Twentieth District Delaware and Jay Counties: three (3) representatives;

Twenty-first District Henry County: one (1) representative;

Twenty-second District Randolph and Wayne Counties: two (2) representatives;

Twenty-third District Vigo and Sullivan Counties: three (3) representatives;

Twenty-fourth District Clay and Putnam Counties: one (1) representative;

Twenty-fifth District Hendricks, Morgan, Johnson and Shelby Counties: three (3) representatives;

Twenty-sixth District Marion County: fifteen (15) representatives;

Twenty-seventh District Hancock and Rush Counties: one (1) representative;

Twenty-eighth District Fayette, Union and Franklin Counties: one (1) representative;

Twenty-ninth District Decatur, Bartholomew and Jackson Counties: two (2) representatives;

Thirtieth District Lawrence, Monroe and Brown Counties: two (2) representatives;

Thirty-first District Owen, Greene, Daviess, Martin and Orange Counties: two (2) representatives;

Thirty-second District Ripley, Dearborn, Ohio, Switzerland and Jefferson Counties: two (2) representatives;

Thirty-third District Jennings, Scott and Clark Counties: two (2) representatives;

Thirty-fourth District Washington, Harrison and Crawford Counties: one (1) representative;

Thirty-fifth District Floyd County: one (1) representative;

Thirty-sixth District Knox County: one (1) representative;

Thirty-seventh District Pike, Dubois, Warrick, Spencer and Perry Counties: two (2) representatives;

Thirty-eighth District Gibson and Posey Counties: one (1) representative;

Thirty-ninth District Vanderburgh County: four (4) representatives.

Supreme Court of the United States

No. **1198 ---** *, October Term, 19* **69**

Edgar D. Whitcomb, Governor of
the State of Indiana,

Appellant,

v.

Patrick Chavis, et al.

APPEAL from the United States District Court for the Southern District of Indiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

March 23, 1970

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IN THE

Supreme Court of the United States

October Term, 1969

Edgar D. Whitcomb, Governor of the State of Indiana,
Appellant,

v.

Patrick Chavis, Andrew Ramsey, Mason Bryant,
Rowland Allen, William Walker, Jr., Marilyn Hotz,
Appellees.

On Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division

JURISDICTIONAL STATEMENT

(As Supplemented by Jurisdictional Statement Filed in the Supreme Court of the United States, Cause No. 735, October Term, 1969)

NOTE

This cause was initiated on January 9, 1969, by filing a complaint in the United States District Court for the Southern District of Indiana, Indianapolis Division. The complaint challenged the constitutionality of the multimember districting provisions of the Indiana Apportionment Acts of 1965 and prayed for injunctive relief. After the district court dismissed as defendants the Indiana General assembly and its indicated members, appellant here remained as the principal defendant in that action. On July 28, 1969, the district court entered its judgment declaring the Indiana Apportionment Acts of 1965 unconstitutional. Appellant here, appealed the judgment of the district court of July 28, 1969. The appeal was docketed in this Court on October 13, 1969, under Cause No. 735, October Term, 1969.

On December 15, 1969, the district court entered a judgment enjoining appellant and all state election officials from conducting the 1970 general election for the state legislature under the Indiana Apportionment Acts of 1965, previously declared unconstitutional by the district court. The district court reapportioned the state and as a part of its judgment of December 15, 1969, directed that appellant and all state election officials conduct the 1970 general elections for the state legislature in accordance with the district court's plan of reapportionment.

The appeal in this cause is a continuation of the appeal from the district court's judgment of July 28, 1969, docketed in this court on October 13, 1969, Cause No. 735, October Term, 1969.

The Jurisdictional Statement in this cause is an abbreviated form of the requirements of Rule 15 of this Court. This Jurisdictional Statement is a continuation of the Jurisdictional Statement previously filed in this cause by Appellant under Cause No. 735, October Term, 1969, and must be read in conjunction with the Jurisdictional Statement previously docketed with this Court, for a full understanding of this cause. To this end Appellant will move to consolidate this cause with Cause No. 735, October Term, 1969.

OPINION BELOW

On December 15, 1969, the United States District Court for the Southern District of Indiana, Indianapolis Division, the court below, entered its judgment enjoining Appellant and all state election officials from conducting any primary, general or special elections for the offices of Indiana State Senator or Indiana State Representative by use of the districts created by the Indiana Acts of 1965, declared unconstitutional by the district court in its judgment of July 28, 1969. The district court also mandated Appellant and all state election officials to conduct all primary, general and special elections during the year 1970 for the offices of Indiana State Senator or Indiana State Representative in accordance with the district court's judgment of December 15, 1969, by use of the districts created and described in the district court's judgment. Further, the district court retained jurisdiction of this cause for the purpose of passing upon any future claims of unconstitutionality made by plaintiffs (appellees here) against any future legislative apportionment adopted by the General Assembly of Indiana by reason of the district court's order. The opinion of the district court is as yet unreported, but may be found in Appellant's Appendix To Jurisdictional Statement.

The district court issued an opinion along with its judgment of July 28, 1969. That opinion is also unreported as yet. It may be found in Appendix A, Appendices to Jurisdictional Statement, Cause No. 735, October Term, 1969.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

This action was initiated by the filing of a complaint for a Declaratory Judgment as provided in 28 U.S.C.A. § 2201, seeking declaratory relief. The suit challenged the constitutionality of the multi-member districting provisions of the Legislative Apportionment Statutes of Indiana, Indiana Acts of 1965 (2d Spec. Sess.) ch. 5, § 3 and ch. 4, § 3, as found in Burns (1968 Repl.) §§ 34-104 and 34-102, respectively, as they related to Marion County, State of Indiana.

The district court's jurisdiction to entertain this cause was predicated on 28 U.S.C.A. § 1343, providing that district courts have original jurisdiction of any civil action authorized by law to be commenced by any person to redress the deprivation, under color of any state law, of any right secured by the Constitution of the United States.

A district court of three judges was convened as required by the provisions of 28 U.S.C.A. §§ 2281 and 2284.

The district court announced and entered its judgment on July 28, 1969, declaring the Indiana Apportionment Acts of 1965 unconstitutional. Appellants filed their Notice of Appeal from this judgment with the United States District Court for the Southern District of Indiana, Indianapolis Division on August 20, 1969. An appeal from this judgment was docketed in this Court on October 13, 1969, as Cause No. 735, October Term, 1969.

The district court entered the judgment from which appellant appeals in this cause on December 15, 1969. Appellants filed their Notice of Appeal from that judgment on December 22, 1969, with the United States District Court for the Southern District of Indiana, Indianapolis Division.

Appellant believes 28 U.S.C.A. § 1253 confers Jurisdiction of this appeal on this Court. Appellant believes the cases of *Reynolds v. Sims,* 377 U.S. 533 (1964) and *Westberry v. Sanders,* 376 U.S. 1 (1964), to sustain the jurisdiction of this Court to entertain this cause.

QUESTIONS PRESENTED BY APPEAL

1. Whether the district court erred when it reapportioned the Indiana state legislative districts on the basis

of the outdated 1960 census figures, on the eve of the 1970 census, even though the next regular session of the Indiana state legislature would have reapportioned state legislative districts on the basis of the 1970 census and even though the state legislative districts were constitutionally reapportioned with the approval of the district court in 1965.

2. Whether the district court in redistricting Marion County with a view to maintaining the geographical and political integrity of the Center Township Ghetto gerrymandered Marion County contrary to the ruling precedents of this Court.

3. Whether the district court erred when it went outside the complaint and redistricted the entire State even though the complaint in this cause only challenged the Marion County multi-member district, even though the district court found that, of the six plaintiffs, only Mason Bryant, a resident of the Center Township (Marion County) Ghetto, was entitled to the relief for which plaintiffs prayed and even though the only relief for which plaintiffs prayed was a declaration that the Marion County multi-member district was unconstitutional.

4. Whether the district court in its plan of reapportionment as to the Senate of the State Legislature erred in that the district court plan crosses county lines contrary to the prohibition of Art. 4, § 6, of the Indiana Constitution and in that it, without due process of law, deprives twenty-five duly elected senators of their right to serve their full four-year term as required by Art. 4, § 3 of the Indiana Constitution.

5. Whether the district court erred when it required single member districts throughout the state, notwithstanding a clear state constitutional preference for some multi-member districts.

6. Whether the district court violated public policy of the United States in designating certain geographical areas as "Ghettos" when such areas are chiefly characterized by the race of persons living within such areas.

STATEMENT OF THE CASE

In October of 1965, the Indiana General Assembly enacted legislation reapportioning the state. Indiana Apportionment Acts, 1965 Acts (2d Spec. Sess.), Ch. 5, § 3 and Ch. 4, § 3, as found in Burns (1969 Repl.), §§ 34-104 and 34-102, respectively. The United States District Court for the Southern District of Indiana, Indianapolis Division, found the Indiana Apportionment Act of 1965 constitutional. *Stout v. Bottorff*, 249 F. Supp. 488 (D.C. Ind. 1965).

On January 9, 1969, an action was initiated in the United States District Court for the Southern District of Indiana, Indianapolis Division, challenging the multi-member districting provisions of the Indiana Apportionment Act of 1965. On July 28, 1969, the district court entered a judgment declaring the multi-member districting provisions of the Indiana Apportionment Act of 1965 unconstitutional. On December 15, 1969, the district court entered a judgment granting the plaintiffs relief. The district court enjoined all state election officials (not parties to the litigation) from conducting any primary, general or special elections for the offices of Indiana State Senator or Indiana State Representative under the Indiana Apportionment Act of 1965. Further, the district court mandated all state election officials (not parties to the litigation) to conduct all primary, general and special elections, for the year 1970, for the offices of Indiana State Senator or Indiana State Representative, by use of the districts created and described by the judgment of the district court of December 15, 1969. As a part of its judgment of December 15, 1969, the district court issued a redistricting plan for the State of Indiana. For the district court's judgment of December 15, 1969, see Appellant's Appendix to Jurisdictional Statement, p. 1. For the district court's redistricting plan see Appellant's Appendix to Jurisdictional Statement, p. 11.

In devising its plan, the district court used the 1960 census data as a basis for redistricting the state. The variances for the districts created by the district court were kept within ±1%, according to the 1960 census data.

The state legislature is composed of 100 representatives and 50 senators. The district court plan divided the state into 100 districts, one per representative. The house districts are numbered 1 through 100. Each senate district consists of two house districts, chosen in numerical sequence. Senate district no. 1 consists of house districts no. 1 and 2, senate district no. 2 consists of house districts nos. 3 and 4, and so on, senate district no. 50 consists of house districts nos. 99 and 100.

Fifteen legislative districts were allotted to Marion County. The districts were numbered 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100. Senate district no. 43 consists of house district no. 85 and house district no. 86. House district no. 85 is a selected portion of Johnson County, contiguous with house district no. 86 which is wholly within Marion County.

Marion County consists of nine townships. The nine townships are geometrically arranged to approximate a square. Center Township is situated in the middle of the county. Eight of the legislative districts allotted to Marion County were apportioned to Center Township. The districts allotted to Center Township are numbered 93, 94, 95, 96, 97, 98, 99 and 100. Four of the eight districts allotted to Center Township approximate the Center Township Ghetto, as defined by the district court in its judgment of July 28, 1969. The four districts approximating the Center Township Ghetto are districts nos. 97, 98. 99 and 100.

Comporting with the national trend, Marion County has experienced a substantial shift in population away from the center city and to the suburbs since the 1960 census data was compiled. Whereas, according to the 1960 census, 47.8% of the Marion County population lived in Center Township, only 37.6% of the Marion County population resided in Center Township on June 30, 1969. Aggravating the shift in population to the suburbs was an absolute decline in the population of the Center Township Ghetto since the 1960 census attributable to population displacement as the result of inter-state highway planning, major thoroughfare construction and university hospital and industrial expansion. Thus, according to June 30, 1969, census figures for Marion County all of Center Township is over-represented. The residents in the districts in the Center Township Ghetto are 17% over-represented. The residents in the districts in the non-Ghetto area of Center Township vary from 8% over-represented to 20% over-represented. In contrast, the residents of three districts comprising suburban areas of Marion County are grossly under-represented in degrees varying from 36% under-represented in district 91 to 50% under-represented in district 89. For tables illustrating this phenomena, see Appellant's "Emergency Application for Stay" filed with this court in this cause on July 29, 1969.

The district court issued its plan on December 15, 1969, only 16 days before the first day of 1970. With the advent of the new year, the Bureau of the Census commenced a compilation of the 1970 census. The next regular session of the state legislature will meet in January of 1971. Available to it will be sufficient 1970 census data upon which constitutionally to reapportion the state.

The district court's plan was devised with a view to maintaining the geographical and political integrity of what it denominated as the Center Township "Ghetto." In its judgment of December 15, 1969, the district court specifically rejected a plan of the intervening defendants redistricting Marion County because the district court noted that ". . . in the intervening defendant's plan large suburban areas are combined with parts of the Center Township ghetto area. . . ." Appendix to Jurisdictional Statement, p. 5. In approving plaintiffs' plan the district court said ". . . [p]laintiffs' plan also protects the legally cognizable racial minority group [the Center Township ghetto] against dilution of its voting strength [;] [t]his is also true when the respective House districts are combined for senatorial districts." Appendix to Jurisdictional Statement, p. 6.

The district court redistricted the entire state. However, the complaint in this cause only challenged the Marion County multi-member district. The district court found that, of the six plaintiffs, only Mason Bryant, a resident of the Marion County Center Township Ghetto, was entitled to the relief for which plaintiffs prayed. In their complaint, the only relief for which plaintiffs prayed was a declaration that the Marion County multi-member district was unconstitutional. The district court's sole basis for requiring the redistricting of the entire state may be found in its judgment of July 28, 1969, where the court said that:

> "Turning to state-wide redistricting, to redistrict Marion County alone would leave the legislature confronted with impermissible population variations between Marion County districts and other districts in the state." (Appendices to the Jurisdictional Statement, Cause No. 735, October Term, 1969, p. 35, see also p. 43)

From the statement of the district court, Appellant infers that the district court concluded that the population of new sub-districts within Marion County would vary significantly from districts outside of Marion County and that Marion County was either under-represented or over-represented under the Indiana Apportionment Act of 1965 *vis-a-vis* other districts within the state. Under the Reapportionment Act of 1965, 15 seats in the house of representatives and eight seats in the senate were allotted to Marion County. Under the district court's plan, 15 seats in the house of representatives were allotted to Marion County. Under the district court's plan, 7½ seats in the senate were allotted to Marion County. The ½ seat consists of district 86, wholly within Marion County, combined with house district 85 continguous with district 86, but wholly within Johnson County, an adjoining county.

THE QUESTIONS ARE SUBSTANTIAL

The issues presented by this appeal are of vital concern to the State of Indiana and every other state having multimember districts or confronted with reapportionment on the eve of a compilation of a new decennial census.

1. The Outdated 1960 Census Figures Question.

The district court's plan was issued on December 15, 1969. The plan was based on the 1960 census figures. Under the district court's plan, based on the 1960 census figures, the degrees of variations among districts were theoretically kept within ±1%.

However, factually, the district court erred when it required reapportionment of the state legislative districts on the basis of the 1960 census data on the eve of the 1970 census. The 1960 census figures are simply outmoded. As Appellant illustrated in his "Emergency Application for

Stay" filed with this court on January 29, 1970, the neat mathematical equality achieved by the district court on the basis of the 1960 census figures was an absurdity in view of 1969 estimates. The district court's plan as tested by available 1969 census data simply illustrates a well known fact, that substantial shifts in the population have occurred since the compilation of the 1960 census figures.

Three lower federal courts refused to require reapportionment on the basis of the 1960 census figures during the year 1969 solely because the 1960 census figures were no longer reliable in view of obvious and substantial population changes and shifts since 1960. *Skolnick v. Mayor,* 415 F.2d 1291 (7th Cir. 1969) (decided August 8, 1969); *Cahoon et al. v. Maddox et al.,* — F. Supp. — (D.C. Atl. D. Ga. 1969) (Cause No. 13011, decided December 9, 1969); *Skolnick et al. v. State Election Board,* — F. Supp. — (D.C.E.D. Ill. 1969) (Cause No. 69-C-902, decided December 1, 1969). The federal courts in these cases refused to require reapportionment on the eve of the 1970 census even though the districting plans involved in those cases were found to be unconstitutional. Furthermore, the district court's decision in this cause directly conflicts with the decisions of other lower federal courts in this regard.

The Indiana General Assembly constitutionally reapportioned the state legislature in 1965 with the approval of the United States District Court for the Southern District of Indiana, Indianapolis Division. *Stout v. Bottorff,* 249 F. Supp. 488 (D.C. Ind. 1965). In *Reynolds v. Sims,* 377 U.S. 522 (1964), at pp. 583-584, this court held that a rational approach to reapportionment would require a state to reapportion constitutionally but once between each decennial census. Thus, since the state constitutionally reapportioned in 1965, the state should not be required constitutionally to reapportion again until the 1970 census figures become available in the fall of 1970.

The question of when the decennial census figures become obsolete and the number of times that a state can be required constitutionally to reapportion between decennial censuses are substantial questions which can only be determined by this Court.

2. *The Gerrymandering Question.*

The district court condemned a plan of redistricting submitted by the intervening defendants because the plan combined suburban areas with parts of the Marion County Center Township Ghetto. On the other hand, the district court's plan, in its own words, ". . . protects the legally cognizable racial minority group [the Center Township ghetto] against the dilution of its voting strength. . . ." Appendix to Jurisdictional Statement, p. 6. This Court has often held that citizens cast votes, not special interest groups. *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969); *Reynolds v. Sims,* 394 U.S. 533 (1964). The district court's plan was devised with a view to maintaining the geographical and political integrity of the Center Township Ghetto which the court found to be comprised of a distinct special group interest. This court has soundly condemned such sophisticated gerrymandering. *Gomillion v. Lightfoot,* 306 U.S. 339 (1960).

Whether the district court gerrymandered the state in attempting to maintain the geographical and political integrity of the Marion County Center Township Ghetto in contravention of the ruling precedents of this Court is a substantial question which only this Court can determine.

3. *The Redistricting Of The Entire State Question.*

The district court order complained of exceeded the scope of the relief sought by the complaint, the evidence and its own findings when it required redistricting of the entire state. Only the Marion County multi-member districting provisions of the Indiana Apportionment Act were found to be unconstitutional in this cause. The district court should have limited itself to redistricting Marion County only. Whether the district court erred in requiring a redistricting of the entire state is a substantial question which can only be determined by this Court.

4. *The Indiana Constitutional Questions.*

Art. 4, § 6, of the Indiana Constitution provides that ". . . no county, for Senatorial apportionment shall ever be divided." Art. 4, § 3 of the Indiana Constitution provides that senators be elected for a term of four years, so that one half of the senate or twenty-five senators is elected every two years. In a number of instances, the district court's plan provided for senate districts which crossed county lines in violation of Art. 4, § 6 of the Indiana Constitution. Furthermore, the district court's plan required all fifty senators to run for office thereby depriving twenty-five holdover senators of their full four-year terms of office. Whether the district court erred in devising a plan of reapportionment violating the Indiana Constitution is a substantial question which can only be determined by this court.

5. *The Single Member District Question.*

Although the district court did not demand single member districts, the district court did say in its judgment of December 15, 1969, that single member districts would be preferred and the district court's plan did in fact provide for single member districts. Appellant submits that in view of the district court's stated preference and the actual plan devised by the court, Appellants have no choice but to enact reapportionment legislation providing for single member districts. Whether the state can be required to enact reapportionment legislation providing for single member districts is a substantial question which can only be determined by this court.

6. *The Public Policy Question.*

Although somewhat related to the Gerrymandering Question, the Appellant submits that the district court in rendering its judgment of December 15, 1969, and in defining certain geographic areas and in designating them as "Ghetto Areas," violated the stated public policy of the United States. One of the chief characteristics by which the lower court defined such areas was that of the racial character of its inhabitants. By not recognizing the inherent mobility and fluidity of society the district court acted contrary to public policy. Whether the district court erred in defining such areas according to their racial characteristics is a substantial question which can only be determined by this Court.

Appellant submits that this appeal brings before this court substantial federal questions which require plenary consideration with briefs on the merits and oral argument for their resolution.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK CHAVIS, et al. *Plaintiffs* vs. EDGAR D. WHITCOMB, Governor of the State of Indiana *Defendant* and JOHN C. RUCKELSHAUS, et al. *Intervening Defendants*	NO. IP 69-C-23

December 15th, 1969

Before KERNER, Circuit Judge, and STECKLER and NOLAND, District Judges.

THE COURT'S PLAN AND ORDER FOR REAPPORTIONMENT OF THE LEGISLATIVE SEATS IN THE GENERAL ASSEMBLY OF INDIANA

By Judges Kerner, Steckler, and Noland:

This suit was tried by the three-judge court on June 17 and 18, 1969. After consideration of the legal and factual issues, the Court entered its opinion and a separate order on July 28, 1969.[1] The Court found that the multi-member districting provisions of the present legislative apportionment statutes of Indiana, Indiana Acts of 1965 (2d Spec. Sess.), ch. 5, sec. 3, and ch. 4, sec. 3 (Ind. Ann. Stat. §§ 34-102, 34-104 (Burns Supp. 1968)), as they relate to Marion County, operate to minimize and cancel out the voting strength of a cognizable racial minority group, which was defined and delineated in the opinion, to the extent that the members of such minority group are deprived of equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States. We therefore declared those portions of the legislative apportionment statutes to be unconstitutional and void.

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[1] __ F. Supp. __ (S.D. Ind. 1969).

Upon the evidence adduced, it was further determined that: (1) to redistrict Marion County alone, so as to provide districts meeting constitutional standards, would leave constitutionally impermissible population variations between the newly created districts in Marion County and other districts in the state, and (2) independent of the new districts in Marion County, constitutionally impermissible population variations would remain between presently existing districts in the state when compared among themselves. Thus the portions of the statutes relating to Marion County were found to be not severable from the full body of the statutes. We therefore found a redistricting of the entire state as to both houses of the General Assembly to be necessary.

While recognizing the right of the injured plaintiffs to have their constitutional rights vindicated at the earliest practicable time, we also recognized that the federal judiciary functions within a system of federalism which entrusts the responsibility of legislative apportionment and districting primarily to the state legislature. We therefore granted the State until October 1, 1969, to enact statutes redistricting the State and reapportioning the legislative seats in the General Assembly to remedy the constitutionally impermissible districting and apportionment, retaining jurisdiction should the State fail to comply.

On August 20, 1969, defendant Edgar D. Whitcomb, Governor of the State of Indiana, moved this Court to stay proceedings in the action. On August 27, 1969, the intervening defendants, joined by Governor Whitcomb, separately moved to stay proceedings. These motions were denied on September 4, 1969.

On October 15, 1969, judicial notice was taken of the fact that a special session of the Indiana General Assembly had not been called for the purpose of redistricting and reapportioning the General Assembly. Accordingly, the Court concluded that it would proceed to redistrict the State pursuant to its opinion and order of July 28, 1969.

At an informal conference in chambers held on October 15, 1969, counsel for the parties were informed that the Court wished to invite not only the parties to the action but also the State Committees of the majority and minority parties in the Indiana General Assembly, the legislative leaders of said parties, and the members of the Indiana State Election Board, to submit proposed plans for the Court's consideration.

Pursuant to notice a further conference on October 17, 1969, was held in open court for the purpose of announcing minimal guidelines for submission of proposed plans. The date of November 3, 1969, was fixed as the date by which such plans were to be submitted. Persons desiring to submit plans were ordered to file notice of their intent to do so on or before October 24, 1969. The Court announced that 1960 census data would be used as a basis for redistricting; that single-member districts would be preferred to multi-member districts; and that county and township boundary lines would be crossed in drawing district lines wherever necessary to achieve equality of population in the districts but that the Court would strive to preserve the integrity of county and township lines.

On October 30, 1969, the Court granted persons submitting proposed plans until November 10, 1969, to file objections, if any, to plans proposed by other persons. Defendant Governor Whitcomb on November 3, 1969, moved the Court to modify the order of October 30th by providing that any party to the action might file objections to any of the proposed plans filed by any party or non-party with the Court within ten (10) days after any party received actual notice of the filing of any proposed plan submitted by any party or non-party. The motion was denied on November 4, 1969.

The intervening defendants on November 5, 1969, moved for an extension of time within which to file notice of intent and a proposed plan until November 10, 1969. The motion was granted by an entry of November 6, 1969, and the Court further extended until November 13, 1969, the time within which persons having filed proposed plans could file objections to other plans filed with the Court.

The Court has received the following proposed plans, each preceded by a satisfactory notice of intent:

(1) Plaintiffs' plan for Marion County only;

(2) Plan of Leslie Duvall as Chairman, Senate Legislative Apportionment Committee, for the Indiana Senate only;

(3) Plan of Leslie Duvall as Majority Caucus Chairman, Indiana Senate, for the Indiana Senate only;

(4) Plan of State Senator Robert E. Mahowald, for the Indiana Senate only;

(5) Plan of Frederick T. Bauer, Indiana General Assembly House Minority Leader, and David Rogers, Indiana General Assembly Senate Minority Leader, for both the Indiana House and Senate;

(6) Plan of Richard A. Boehning, Indiana General Assembly House Majority Leader, for the Indiana House only;

(7) Plan of Representative Richard J. Lesniak, for Lake County only; and

(8) Plan of Senator Albert J. LaMere, for Lake County only.

As invited by the Court, several persons filed objections to districting plans submitted by other persons. These objections have been considered and the Court appreciates the diligence of the persons submitting them. The Court having prepared its own plan and the objections having been considered, these objections are considered moot. We reached this conclusion after examination of all plans submitted. With the exception of the plaintiffs' plan and the intervening defendants' plan, all other plans contain such a large deviation between the most populous and least populous districts that they were eliminated from further consideration.

Although the Court has previously indicated that 1960 census statistics should be utilized, several of the objections argue that these statistics are so outdated as to be not credible. The short answer to this objection was given by an earlier three-judge court of this district in considering congressional redistricting: "[T]he Census of 1960 must be tolerated until the next official census in order to maintain relative political stability." *Grills v. Branigin,* 284 F. Supp. 176 (S.D. Ind. 1968).

In districting Marion County, two of the plans submitted received primary consideration, the plan of the plaintiffs, and the plan of the intervening defendants. It is the opinion of the Court that the plaintiffs' plan for districting Marion County more nearly meets the constitutional standards laid down by the Supreme Court as followed by this Court in reaching its opinion of July 28, 1969. We note in the intervening defendants' plan large suburban areas are combined with parts of the Center Township ghetto area. In fact, in seven instances the intervening defendants' plan combines suburban areas with portions of the Center Township inner city area. As we observed in our opinion of July 28, 1969, sophisticated gerrymandering has been soundly condemned. *Gomillion v. Lightfoot,* 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed. 2d 110 (1960).

Plaintiffs' districts in Marion County closely follow existing city and township boundary lines and are compact and composed of contiguous territory. Additionally, plaintiffs' House districts approximate mathematical equality of population. The greatest deviation is minus .63 of 1% from the ideal House district in Marion County and the average deviation for all fifteen (15) House districts in Marion County is .26 of 1%. Plaintiffs' plan also protects the legally cognizable racial minority group against dilution of its voting strength. This is also true when the respective House districts are combined for senatorial districts.

The legislature having failed to act, this Court now establishes House and Senate districts for the State of Indiana which in the Court's opinion comply with federal constitutional requirements as set forth in decisions of the United States Supreme Court, and as applied in this Court's opinion and order of July 28, 1969.

The Indiana Election Code provides a 30-day period for declarations of candidacy for nomination to a General Assembly seat; this period begins on February 24, 1970. Furthermore, precinct election boundaries will have to be adjusted in January of 1970 by the election officials to coincide with the boundaries of new legislative districts.

The legislative districting plan prescribed herein sets forth a description of each House district. The plan is based on 1960 census data which results in an ideal House district of 46,625, and an ideal Senate district of 93,250. As indicated to the interested persons at the October 17, 1969, conference, single-member districts have been utilized throughout the state; further, the Court's aim has been for mathematical equality of population in each district. The difficulty of devising 100 compact and contiguous House districts within that framework has in large part precluded preservation of county lines. However, township boundary lines have been followed except in the state's ten metropolitan areas, where the density of population required the division of townships.

For the convenience of the electorate and of the election officials, each Senate district consists of two House districts chosen by numerical sequence. There are 100 House districts and 50 Senate districts. Thus Senate district No. 1 consists of House districts Nos. 1 and 2, and Senate district No. 2 consists of House districts Nos. 3 and 4, and so forth. The House districts are set out in map form for the use of election officials. The Senate districts are described only by designating the combinations of House districts. The accompanying listing indicates the population of each House district and the percentage deviation from the ideal district of 46,625.

Each district is further described by townships, census tracts, blocks or enumeration districts. Where township lines have been followed, the composition of the district is largely self-explanatory. However, where districts have been described by census designations, it has been necessary to convert the description into streetline locations. This conversion has been accomplished by the use of detail maps A through J for the metropolitan areas of Lake County, South Bend, Fort Wayne, Kokomo, Muncie, Anderson, Marion County, Richmond, Terre Haute, and Evansville.

(See Appendix I for listing of House Districts, Appendix II for listing of Senate Districts, and Map Appendix for District Boundary Lines.)[2]

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[2] The Court acknowledges with thanks the permission granted by the George F. Cram and R. L. Polk Companies to publish and make use of copyrighted maps, Corporate Boundaries, Marion County, Indiana, and Official Arrow City Map, Hammond and Vicinity, Indiana.

The conversion to streetline locations was made possible by the assistance and cooperation of the United States Bureau of the Census, Department of Commerce. The Court especially recognizes and credits the Bureau of the Census for its help in providing demographic data to accomplish this redistricting plan. Their information and assistance has made it possible to audit population figures and percentage deviations from the ideal.

In establishing district lines for the metropolitan areas of the state, the Court has taken judicial notice of the 1960 census statistics as to the location of the non-white population. The single-member district plan gives recognition to the cognizable racial minority group whose grievance lead to this litigation.

In reapportioning legislative seats in the General Assembly, the question of how the "holdover" senators shall be treated is presented.

The Constitution of the State of Indiana, Art. 4, Sec. 3, provides that senators are elected for 4-year terms; thus, theoretically half of the members of the Senate, those who were elected in the 1968 general election, would not stand for re-election in 1970. Since the Act under which they were elected has been found unconstitutional, the Court is required to determine what is to become of the remainder of their terms of office. To permit the present terms of incumbent senators to extend beyond the 1970 general election would prevent implementation of the districting plan herein prescribed. Senators elected in 1968 under what has now been declared to be an unconstitutional statute do not have a vested right to serve out the balance of their 4-year terms. *Reynolds v. State,* 233 F. Supp. 323 (W.D. Okla. 1964). Thus the Court has concluded that it will be necessary to fill all fifty senatorial seats in the 1970 election, and that the present terms of all incumbent senators will expire at the time the members of the newly

elected legislature take office on January 7, 1971. *Mann v. Davis,* 238 F. Supp. 458 (E.D. Va. 1964), *aff'd* 379 U.S. 694 (1965); *Hughes v. WMCA, Inc.,* 379 U.S. 694 (1965); *Holt v. Richardson,* 238 F. Supp. 468 (D. Haw. 1965); *People ex. rel. Engle v. Kerner,* 33 Ill. 2d 11, 210 N.E. 2d 165 (1965).

The Indiana constitutional provision for staggering the terms of senators, so that one-half of the Senate terms expire every two years, is entirely proper and valid and would be mandatory in a legislatively devised redistricting plan.

However, the plan adopted herein is provisional in nature and probably will be applicable for only the 1970 election and the subsequent 2-year period. This is true since the 1970 census will have been completed in the interim, and the legislature can very well redistrict itself prior to the 1972 election. On the other hand, it is conceivable that the legislature may fail to redistrict before the 1972 election. In such event, all fifty senatorial seats shall be up for election every two years until such time as the legislature properly redistricts itself. It will then properly be the province of the legislature in redistricting to determine which senatorial districts shall elect senators to 4-year terms and which shall elect senators to 2-year terms to reinstate the staggering of terms.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant, Governor Edgar D. Whitcomb, the State Election Board, the Secretary of State of the State of Indiana, and all election officials under the Election Code of Indiana are hereby enjoined from conducting any primary, general or special elections for the offices of Indiana State Senator or Indiana State Representative by the use of the districts and apportionment created by the Indiana Acts of 1965 (2d Spec. Sess.), ch. 5, sec. 3, and ch. 4, sec. 3 (Ind. Ann. Stat. §§ 34-102, 34-104

(Burns Supp. 1968)) for the reason that those statutes are violative of the Constitution of the United States for the reasons given in this opinion and in the Court's opinion and order of July 28, 1969.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Governor Edgar D. Whitcomb, the State Election Board, the Secretary of State, and all election officials under the Election Code of Indiana are hereby mandated to conduct all primary, general and special elections during the year 1970 for the offices of Indiana State Senator or Indiana State Representative in accordance with this judgment and by the use of the districts created and described by this judgment; and this order now constitutes appropriate notice to all of such officials.

The Court retains jurisdiction of this action for the purpose of passing upon any future claims of unconstitutionality made by plaintiffs against any future legislative apportionment adopted by the General Assembly of Indiana by reason of this order, and for such other action in the premises as may be necessary.

S/ OTTO KERNER
JUDGE
United States Court of Appeals
for the Seventh Circuit

S/ WILLIAM E. STECKLER
JUDGE
United States District Court

S/ JAMES E. NOLAND
JUDGE
United States District Court

APPENDIX I

HOUSE DISTRICTS

District No.	Description	Total Population	Percentage of Deviation
1	Posey County: All Vanderburgh County: Tracts 29, 30, 31, 32 V6, V7 & V8 Tract 28: Blocks 4-13, 19-30, 37-44, 50-57, 64-71, 76-79, and 80 split*	46,966	+.73%
2	Gibson County: Johnson Township Vanderburgh County: Tracts 4, 5, 33, 34, 35, 38, V3, V4, V9, V10 Tract 2: Blocks 1-33, 39-49, 54-75 Tract 3: Blocks 1-3, 11-22 Tract 22: Block 1 Tract 37: Blocks 1-45, 49-52, 61-67	46,711	+.18%
3	Vanderburgh County: Tracts 1, 18, 19, 20, 21, 23, 24, 25, 26, 27 Tract 2: Blocks 34-38, 50-53 Tract 3: Blocks 4-10, 23-35, 38, 39 Tract 7: Blocks 1-14 Tract 14: Blocks 1-8 Tract 15: Blocks 1-16, 21-25 Tract 16: Blocks 1-32 Tract 17: Blocks 1-27, 9 split* Tract 22: Blocks 2-61 Tract 28: Blocks 1-3, 14-18, 31-36, 45-49, 58-63, 72-75, 81, 80 split*	46,735	+.24%
4	Vanderburgh County: Tracts 6, 8, 9, 10, 11, 12, 13, V1, 36 Tract 3: Blocks 36, 37, 40-52 Tract 7: Blocks 15-42 Tract 14: Blocks 9-28 Tract 15: Blocks 17-20, 26-48 Tract 16: Blocks 33-58 Tract 17: Blocks 28-40, 9 split* Tract 37: Blocks 46-48, 53-60	46,859	+.50%

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* Block, contains no population—is split into two (2) districts by a projected line.

District No.	Description	Total Population	Percentage of Deviation
5	Dubois County: Bainbridge, Boone & Madison Townships Gibson County: Center, Columbia, Montgomery, Patoka, Union, Wabash & Washington Townships Pike County: Clay, Jefferson, Logan, Madison, Marion, Patoka & Washington Townships	46,999	+.80%
6	Warrick County: All Dubois County: Cass & Patoka Townships Gibson County: Barton Township Pike County: Lockhart & Monroe Townships Spencer County: Carter, Clay, Grass, Hammond, Jackson, Luce & Ohio Townships	46,857	+.50%
7	Perry County: All Crawford County: Johnson, Patoka & Union Townships Dubois County: Columbia, Ferdinand, Hall, Harbison, Jackson, Jefferson & Marion Townships Orange County: French Lick, Greenfield, Jackson, Northeast, Northwest, Orangeville, Orleans & Paoli Townships Spencer County: Harrison & Huff Townships	46,514	—.24%
8	Harrison County: All Crawford County: Boone, Jennings, Liberty, Ohio, Sterling & Whiskey Run Townships Floyd County: Georgetown & Greenville Townships Orange County: Southeast & Stampers Creek Townships Washington County: Brown, Howard, Jackson, Monroe, Pierce, Posey, Madison, Vernon, Jefferson & Washington Townships	46,655	+.06%

District No.	Description	Total Population	Percentage of Deviation
9	Floyd County: Franklin, Lafayette & New Albany Townships	46,314	—.67%
10	Clark County: Carr, Jeffersonville, Silver Creek, Union & Wood Townships	46,634	+.02%
11	Scott County: All Clark County: Bethlehem, Charlestown, Monroe, Oregon, Owen, Utica & Washington Townships Jackson County: Grassy Fork & Vernon Townships Jefferson County: Graham, Hanover, Lancaster, Republican, Saluda & Smyrna Townships Jennings County: Marion & Montgomery Townships Washington County: Franklin, Gibson & Polk Townships	46,903	+.60%
12	Ohio County: All Switzerland County: All Dearborn County: Caesar Creek, Center, Clay, Hogan, Sparta & Washington Townships Jefferson County: Madison, Milton, Monroe & Shelby Townships Ripley County: Brown, Center, Johnson, Shelby & Washington Townships	46,491	—.29%
13	Bartholomew County: Clay, Clifty, Rock Creek, Sand Creek & Wayne Townships Decatur County: Jackson, Marion & Sand Creek Townships Jackson County: Jackson, Redding & Washington Townships Jennings County: Bigger, Campbell, Center, Columbia, Geneva, Lovett, Sand Creek, Spencer & Vernon Townships Ripley County: Otter Creek Township	46,444	—.39%

District No.	Description	Total Population	Percentage of Deviation
14	Bartholomew County: Columbus, Flat Rock, German & Haw Creek Townships in addition to Unorganized Territory Decatur County: Clay Township Johnson County: Blue River Township Shelby County: Jackson, Noble & Washington Townships	46,455	—.37%
15	Brown County: All Bartholomew County: Harrison, Jackson & Ohio Townships Jackson County: Brownstown, Carr, Driftwood, Hamilton, Owen, Pershing & Salt Creek Townships Lawrence County: Bono, Guthrie, Marshall, Pleasant Run & Shawswick Townships	46,331	—.63%
16	Martin County: All Daviess County: Barr, Harrison, Madison, Reeve, Van Buren, Veale & Washington Townships Greene County: Jackson & Taylor Townships Lawrence County: Indian Creek, Marion, Perry & Spice Valley Townships	47,045	+.90%
17	Knox County: All Daviess County: Bogard, Elmore & Steele Townships Gibson County: White River Township	46,891	+.57%
18	Sullivan County: All Clay County: Cass, Harrison, Lewis, Perry, Posey, Jackson, Sugar Ridge & Washington Townships Owen County: Marion Township Vigo County: Honey Creek, Linton, Pierson, Prairie Creek, Prairieton & Riley Townships	46,849	+.48%

District No.	Description	Total Population	Percentage of Deviation
19	Greene County: Beech Creek, Cass, Center, Fairplay, Grant, Highland, Jefferson, Richland, Smith, Stafford, Stockton, Wright & Washington Townships Monroe County: Bean Blossom, Clear Creek, Indian Creek, Polk, Richland, Salt Creek, Washington & Van Buren Townships Owen County: Clay, Jefferson, Franklin, Lafayette, Montgomery, Morgan, Washington & Wayne Townships	46,366	—.56%
20	Monroe County: Benton, Bloomington & Perry Townships	46,402	—.48%
21	Hendricks County: Guilford, Liberty & Washington Townships Morgan County: Adams, Ashland Baker, Brown, Greene, Gregg, Jefferson, Monroe, Ray & Washington Townships Owen County: Harrison & Taylor Townships	46,266	—.77%
22	Hendricks County: Brown, Center, Clay, Eel River, Franklin, Lincoln, Marion, Middle & Union Townships Owen County: Jackson & Jennings Townships Putnam County: Clinton, Cloverdale, Floyd, Franklin, Greencastle Jackson, Jefferson, Madison, Marion, Monroe, Warren & Washington Townships	46,255	—.79%
23	Vigo County: Lost Creek Township Harrison Township: Tracts E & G Tract D: Blocks 1-223, 224 split* Tract F: Blocks 1-207, 209-220 Tract B: Blocks 243-293	46,563	—.13%

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* This block is split at the Township Line between Harrison and Lost Creek Townships.

District No.	Description	Total Population	Percentage of Deviation
24	Vigo County: Fayette, Otter Creek & Sugar Creek Townships Harrison Township: Tracts A & C Tract B: Blocks 1-242	46,362	—.56%
25	Parke County: All Clay County: Brazil, Dick Johnson & Van Buren Townships Vermillion County: Clinton, Eugene, Helt & Vermillion Townships Vigo County: Nevins Township	46,159	—.99%
26	Montgomery County: All Fountain County: Cain, Fulton, Jackson, Mill Creek, Troy, Van Buren & Wabash Townships Putnam County: Russell Township Vermillion County: Highland Township Warren County: Kent & Mound Townships	46,506	—.26%
27	Clinton County: All Carroll County: Burlington & Democrat Townships Howard County: Honey Creek & Monroe Townships Tippecanoe County: Lauramie, Randolph, Sheffield & Wea Townships Tipton County: Jefferson & Prairie Townships	46,832	+.44%
28	Carroll County: Clay Township Tippecanoe County: Fairfield & Perry Townships	46,346	—.60%
29	Benton County: Bolivar Township Fountain County: Davis, Logan, Richland & Shawnee Townships Tippecanoe County: Jackson, Shelby, Union, Wabash & Wayne Townships Warren County: Adams, Jordan, Liberty, Medina, Pike, Pine, Prairie, Steuben, Warren & Washington Townships	46,467	—.34%

District No.	Description	Total Population	Percentage of Deviation
30	Jasper County: All Newton County: All Benton County: Center, Gilboa, Grant, Hickory Grove, Oak Grove, Parish Grove, Pine, Richland, Union & York Townships Pulaski County: Cass & White Post Townships Starke County: Railroad Township White County: Princeton, Round Grove & West Point Townships	46,788	+.35%
31	LaPorte County: Cass, Center, Clinton, Dewey, Hanna, New Durham, Noble & Scipio Townships Porter County: Boone, Jackson, Morgan, Pleasant, Porter, Union & Washington Townships	46,845	+.47%
32	Lake County: Cedar Creek, Center, Eagle Creek, Hanover, Ross, West Creek & Winfield Townships	46,779	+.33%
33	Lake County: Tracts SJT60, NOT53, HMC52 Tract HMC49: Blocks 37-67 Tract HMC51: Blocks 42, 45, 166	46,641	+.03%
34	Lake County: Tracts CAT54 & CAT55, Tract GAC6: Blocks 426-455, 533-539 Tract GAC26: Blocks 44-47, 58-65, 69-79, 84-108, 111-149, 152-178, 179 Tract GAC27: Blocks 19-97	46,646	+.04%
35	Lake County: Tracts HMC42, HMC43, HMC44, HMC45, HMC50 Tract HMC46: Blocks 1-38, 47-52†, 61-68, 73 Tract HMC49: Blocks 1-36 Tract HMC51: Blocks 2-6, 11-17, 19-26 Tract ECC37: Blocks 1-67, 76-80	46,602	—.05%

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† There are not any blocks in Tract HMC46 that are numbered 45 or 46. Therefore, this series of blocks starts with number 47.

District No.	Description	Total Population	Percentage of Deviation
36	Lake County: Tracts HMC40, HMC41, ECC28, ECC28cv, ECC35, NOT38, NOT39, ECC29cv. Tract ECC29: Blocks 1-13, 16-55 Tract ECC36: Blocks 1-3, 7-20, 28-40, 44 split* Tract ECC37: Blocks 68-75	46,530	—.20%
37	Lake County: Tracts HMC47 & HMC48 Tract HMC46: Blocks 39-44, 53-60 69-72 Tract HMC51: Blocks 1, 18, 27-41, 46-165, 167-215	46,772	+.31%
38	Lake County: Tracts ECC30, ECC31, ECC32, ECC33 & ECC34 Tract ECC29: Blocks 14-15 Tract ECC36: Blocks 4-6, 21-27, 41-43, 44 split*, & 45 Tract GAC1: Blocks 34-40 Tract GCA6: Blocks 1-80, 85-130, 132-179, 182-231, 234, 239, 240-425, 460-532	46,563	—.13%
39	Lake County: Tracts GAC18, GAC19, GAC20, GAC23 and GAC25 Tract GAC16: Blocks 39-45 Tract GAC21: Blocks 10-21, 28-31 Tract GAC27: Blocks 3-18	46,601	—.05%
40	Lake County: Tracts GAC14, GAC15, GAC17, GAC22 & GAC24 Tract GAC16: Blocks 1-38 Tract GAC21: Blocks 1-9, 22-27, 32-34 Tract GAC26: Blocks 1-43 Tract GAC27: Blocks 102	46,652	+.06%

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* This block, containing no population, is split into two (2) districts by a projected line.

District No.	Description	Total Population	Percentage of Deviation
41	Lake County: Tracts GAC2, GAC3, GAC4, GAC5, GAC7, GAC8, GAC9, GAC10, GAC11, & GAC12 Tract GAC1: Blocks, 1-33, 41-188 Tract GAC6: Blocks 81-84, 131, 180-181, 232-233, 235-238, 456-459 Tract GAC13: Block 1	46,824	+.43%
42	Lake County: Tracts HOT56, HOT57, & HOT58 Tract GAC13: Blocks 2-50 Tract GAC26: Blocks 48-57, 66-68, 80-83, 109-110, 150-151	46,659	+.07%
43	Porter County: Center, Liberty, Portage & Westchester Townships	46,484	—.30%
44	LaPorte County: Cool Spring & Michigan Townships Porter County: Pine Township	47,081	+.98%
45	LaPorte County: Galena, Hudson, Johnson, Kankakee, Lincoln, Pleasant, Prairie, Springfield, Union, Washington & Wills Townships Marshall County: Center, North, Polk & West Townships St. Joseph County: Olive Township Starke County: California, Center, Davis, Jackson, Oregon & Washington Townships	46,621	—.01%
46	St. Joseph County: Tracts C109, C111, C119-C123, 22, 24, 26-28, 34 Tract 20: Blocks 37-40	46,566	—.13%
47	St. Joseph County: Tracts: C110, 1-7, 19, 21, 23, 25 Tract 18: Blocks 2-9, 15-21, 26-29, 35-38 Tract 20: Blocks 1-36, 41-45	46,648	+.05%
48	St. Joseph County: Tracts C112, C113, 8-13, 17 Tract 18: Blocks 1, 10-14, 22-25, 30-34, 39-42	46,584	—.09%

District No.	Description	Total Population	Percentage of Deviation
49	St. Joseph County: Tracts C117, C118, 14, 16, 29-33, 35 Tract 15: Blocks 1-49, 65-69	46,591	—.07%
50	St. Joseph County Tracts M101, M102, M103, M104, M105, M106, M107, C114, C115, C116 Tract 15: Blocks 50-64	46,876	+.54%
51	Elkhart County: Baugo, Cleveland, Elkhart, Harrison, Jackson, Olive & Osolo Townships	46,464	—.35%
52	Elkhart County: Concord, Jefferson & Washington Townships	46,971	+.74%
53	LaGrange County: All Elkhart County: Clinton, Middlebury & York Townships Noble County: Albion, Allen, Elkhart, Orange, Perry, Sparta, Wayne & York Townships and Jefferson Township	46,165	—.99%
54	DeKalb County: All Steuben County: All Noble County: Swan Township	46,864	+.51%
55	Allen County: Tracts C101, C102, C103, C108-C113, C118, C119 Tract 1: Block 51 Tract 33: Block 1	47,040	+.89%
56	Allen County: Tracts 2-10, 34, 35 Tract 1: Blocks 1-50, 52 Tract 33: Blocks 24-51	47,047	+.91%
57	Allen County: Tracts 11-21 Tract 25: Blocks 3-7 Tract 27: Blocks 1-6	46,694	+.15%
58	Allen County: Tracts 26, 28-32, 23, 40 Tract 25: Blocks 1, 2, 8-45 Tract 27: Blocks 7-62 Tract 36: Blocks 1-6, 9-18	46,778	+.33%

District No.	Description	Total Population	Percentage of Deviation
59	Allen County: Tracts 22, 24, 37-39, C104-C107 C114-C117 Tract 33, Blocks 2-23, 52-55 Tract 36: Blocks 7, 8, 19-37 Huntington County: Jackson Township	46,902	+.59%
60	Whitley County: All Huntington County: Clear Creek, Huntington & Warren Townships Kosciusko County: Monroe Township Noble County: Green, Noble & Washington Townships	46,626	+.01%
61	Elkhart County: Benton, Locke & Union Townships Kosciusko County: Jefferson, Plain, Scott, Tippecanoe, Turkey Creek, Van Buren, Washington & Wayne Townships Marshall County: Bourbon & German Townships St. Joseph County: Madison Township	47,091	+.99%
62	Fulton County: Henry & New Castle Townships Kosciusko County: Clay, Etna, Franklin, Harrison, Jackson, Lake, Prairie & Seward Townships Marshall County: Tippecanoe Township Miami County: Allen, Erie, Jefferson, Perry, Peru & Richmond Townships Wabash County: Chester, Paw Paw & Pleasant Townships	46,505	—.26%
63	Carroll County: Adams, Jefferson, Rock Creek & Tippecanoe Townships Fulton County: Aubbeenaubbee & Richland Townships Marshall County: Union, Green & Walnut Townships Pulaski County: Beaver, Franklin, Harrison, Indian Creek, Jefferson,	46,461	—.35%

No. District	Description	Population Total	Deviation Percentage
	Monroe, Rich Grove, Salem & Tippecanoe Townships Starke County: North Bend & Wayne Townships Tippecanoe County: Tippecanoe Township White County: Big Creek, Cass, Honey Creek, Jackson, Liberty, Lincoln, Monon, Prairie & Union Townships		
64	Cass County: Adams, Bethlehem, Boone, Clay, Clinton, Eel, Harrison, Jefferson & Noble Townships Fulton County: Liberty, Rochester, Union & Wayne Townships Miami County: Union Township Pulaski County: Van Buren Township	46,602	—.05%
65	Carroll County: Carrollton, Deer Creek, Jackson, Liberty, Madison, Monroe & Washington Townships Cass County: Deer Creek, Jackson, Miami, Tipton & Washington Townships Howard County: Clay, Ervin, Harrison, Howard, Jackson, Liberty & Union Townships That part of Center Township which is outside the City Limits of the City of Kokomo, plus Enumeration District 37P Miami County: Clay, Deer Creek, Harrison & Pipe Creek Townships Tippecanoe County: Washington Township	46,488	—.29%
66	Howard County: The City of Kokomo, less Enumeration District 37P	46,896	+.58%
67	Hancock County: Vernon Township Hamilton County: Fall Creek, Jackson, Noblesville, Wayne & White River Townships	46,483	—.31%

District No.	Description	Total Population	Percentage of Deviation
	Howard County: Taylor Township Madison County: Duck Creek, Green & Jackson Townships Tipton County: Cicero, Liberty, Madison & Wildcat Townships		
68	Boone County: All Hamilton County: Adams, Clay, Delaware & Washington Townships	46,891	+.57%
69	Grant County: Monroe, Richard, Sims, Van Buren & Washington Townships Huntington County: Dallas, Jefferson, Lancaster, Polk, Rock Creek, Salamonie & Wayne Townships Miami County: Butler, Jackson & Washington Townships Wabash County: Lagro, Liberty, Noble & Waltz Townships	46,666	+.09%
70	Grant County: Center, Franklin & Pleasant Townships	46,407	—.47%
71	Wells County: All Adams County: Blue Creek, French, Jefferson, Kirkland, Monroe, Preble, Root, St. Mary's, Union, Wabash & Washington Townships Huntington County: Union Township	46,218	—.87%
72	Blackford County: All Adams County: Hartford Township Delaware County: Delaware, Niles & Union Townships Grant County: Jefferson Township Jay County: Bear Creek, Greene, Jackson, Knox, Noble, Penn, Richland, Wabash & Wayne Townships	46,299	—.70%
73	Grant County: Fairmount, Green, Liberty & Mill Townships Madison County: Boone, Monroe, Pipe Creek, Richland & Van Buren Townships	47,028	+.86%
74	Delaware County: Hamilton, Harrison, Mount Pleasant & Washington Townships	46,646	+.05%

District No.	Description	Total Population	Percentage of Deviation
	Center Township: Tracts 7-11, 17-20 Tract 2: Blocks 1-11		
75	Delaware County: Salem Township Madison County: Adams, Fall Creek, Lafayette, Stony Creek & Union Townships That part of Anderson Township which is outside the City Limits of the City of Anderson, and excluding Enumeration District 14P	47,056	+.92%
76	Madison County: That part of the City of Anderson which is within the Township of Anderson, plus Enumeration District 14P	47,066	+.95%
77	Jay County: Jefferson, Madison & Pike Townships Randolph County: Franklin, Green, Greensford, Jackson, Monroe, Union, Ward, Washington, Wayne & White River Townships Wayne County: Abington, Center, Clay, Dalton, Franklin, Green, New Garden, Perry & Webster Townships That part of Wayne Township outside the City Limits of the City of Richmond, less Enumeration District 11NA, Enumeration District 11NB, and Enumeration District 14	46,730	+.22%
78	Wayne County: The City of Richmond, plus Enumeration District 11NA, Enumeration District 11NB and Enumeration District 14 (47R not included) (Richmond Airport)	46,358	—.57%
79	Delaware County: Center Township (Pt. of Muncie) Tracts 1, 3-6, 12-16, 21 Tract 2: Blocks 12-81	46,865	+.52%
80	Delaware County: Liberty, Monroe & Perry Townships	46,550	—.16%

District No.	Description	Total Population	Percentage of Deviation
	Henry County: Blue River, Fall Creek, Harrison, Henry, Jefferson, Liberty, Prairie & Stony Creek Townships Randolph County: Stoney Creek Township		
81	Fayette County: All Henry County: Dudley Township Rush County: Noble, Richland, Union & Washington Townships Union County: Brownsville, Center, Harrison, Liberty & Union Townships Wayne County: Boston, Harrison, Jackson, Jefferson & Washington Townships (Including 47R)	46,173	—.97%
82	Franklin County: All Dearborn County: Harrison, Jackson, Kelso, Lawrenceburg, Logan, Manchester, Miller & York Townships Ripley County: Adams, Delaware, Franklin, Jackson & Laughery Townships Union County: Harmony Township	46,541	—.18%
83	Decatur County: Adams, Clinton, Fugit, Salt Creek & Washington Townships Hancock County: Blue River, Brown, Green & Jackson Townships Henry County: Franklin, Greensboro, Spiceland & Wayne Townships Rush County: Anderson, Center, Jackson, Orange, Posey, Ripley, Rushville & Walker Townships Shelby County: Union Township	46,445	—.39%
84	Hancock County: Buck Creek, Center, Sugar Creek & Brandywine Townships Shelby County: Addison, Brandywine, Hanover, Hendricks, Liberty, Marion, Moral, Shelby, Sugar Creek & Van Buren Townships	46,426	—.43%
85	Johnson County: Clark, Franklin, Hensley, Needham, Nineveh, Pleasant, Union & White River Townships	46,959	+.72%

District No.	Description	Total Population	Percentage of Deviation
	Morgan County: Clay, Jackson, Madison & Harrison Townships		
86	Marion County: Tract 420-425, 427, 701-703, 801 Tract 415: Blocks 23-25 Tract 426: Blocks 10-15, 18, 19, 22-62	46,456	—.36%
87	Marion County: Tracts 802-812, 903, 904	46,486	—.30%
88	Marion County: Tracts 605, 607-616, 901, 902 Enumeration Districts 140P, 141S, 141T, 142N, 142P, 143R, 144, 145N	46,460	—.35%
89	Marion County: Tracts 301-310, 602-604 Tract 601: Blocks 42, 43, 51, 58, 59 Enumeration Districts 140R, 140S	46,333	—.63%
90	Marion County: Tracts 207, 212-218, 224-227 Towns of Crow's Nest & Rocky Ripple Enumeration District 33N Tract 205: Block 1 Tract 206: Blocks 1, 2	46,582	—.09%
91	Marion County: Tracts 201-204, 209-210, 101-103, 404, 405 Tract 205 (that area outside City of Indianapolis) Tract 206 (that area outside City of Indianapolis) Tract 211 (less Towns of Rocky Ripple & Crow's Nest) Tract 403: Blocks 1-8, 29-31 Enumeration Districts 31P, 32N, 32P, 32R, 31S	46,602	—.05%
92	Marion County: Tracts 401, 402, 406-412, 417-419 Tract 403: Blocks 9-28, 32-38 & balance of tract outside City Limits of Indianapolis	46,612	—.03%

District No.	Description	Total Population	Percentage of Deviation
93	Marion County: Tracts 560-563, 566-570, 578-581 Tract 564: Blocks 27-41 Tract 565: Blocks 7-33	46,606	—.04%
94	Marion County: Tracts 413, 414, 416, 538-542 Tract 415: Blocks 1-22 Tract 426: Blocks 1-9, 16, 17, 20, 21 Tract 534: Blocks 36, 37, 45-47, 54 Tract 535: Blocks 5, 6, 8-64 Tract 537: Blocks 13-38 Tract 543: Blocks 1-49, 51-61, 65-76, 80-84 & 85 Tract 564: Blocks 1-26, 42 Tract 565: Blocks 1-6	46,524	—.22%
95	Marion County: Tract 559: 571-577 Tract 555: Blocks 40-71 Tract 556: Blocks 35-48 Tract 557: Blocks 5-12, 14, 15, 19-31 Tract 558: Blocks 12-30, 32, 33	46,426	—.43%
96	Marion County: Tracts 544-554 Tract 543: Blocks 50, 62-64, 77-79 Tract 555: Blocks 1-39 Tract 556: Blocks 1-34 Tract 557: Blocks 1-4, 13, 16-18 Tract 558: Blocks 1-11, 31	46,561	—.14%
97	Marion County: Tracts 512-516, 533, 536 Tract 501: Blocks 8-47 Tract 509: Blocks 23-32 Tract 517: Blocks 16, 17, 36-39, 53-56 Tract 532: Blocks 5-10, 19-24 32-37, 46-51, 60-65 Tract 534: Blocks 1-35, 38-44, 48-53 Tract 535: Blocks 1-4, 7 Tract 537: Blocks 1-12	46,560	—.14%
98	Marion County: Tracts 219-223, 502-504, 510, 511 Tract 501: Blocks 1-7	46,572	—.11%

District No.	Description	Total Population	Percentage of Deviation
	Tract 505: Blocks 15, 39, 40 Tract 508: Blocks 10-19, 33-38, 44 Tract 509: Blocks 1-22		
99	Marion County: Tracts 518-520, 527-531 Tract 517: Blocks 1-15, 18-35, 40-52, 57-63 Tract 521: Blocks 16-23, 33-42 Tract 532: Blocks 1-4, 11-18, 25-31, 38-45, 52-59, 66-69	46,412	—.46%
100	Marion County: Tracts 506, 507, 522-526 Tract 505: Blocks 1-14, 16-38, 41-51 Tract 508: Blocks 1-9, 20-32, 39-43 Tract 521: Blocks 1-15, 24-32, 43-47 Tract 601: Blocks 1-41, 44-50, 52-57, 60-79 Tract 601: Outside Indianapolis City Limits	46,375	—.54%

APPENDIX II

SENATE DISTRICTS

Number	Consists of House Districts
1	1 and 2
2	3 and 4
3	5 and 6
4	7 and 8
5	9 and 10
6	11 and 12
7	13 and 14
8	15 and 16
9	17 and 18
10	19 and 20
11	21 and 22
12	23 and 24
13	25 and 26
14	27 and 28
15	29 and 30
16	31 and 32
17	33 and 34
18	35 and 36
19	37 and 38
20	39 and 40
21	41 and 42
22	43 and 44
23	45 and 46
24	47 and 48
25	49 and 50
26	51 and 52
27	53 and 54
28	55 and 56
29	57 and 58
30	59 and 60
31	61 and 62
32	63 and 64
33	65 and 66
34	67 and 68

Number	Consists of House Districts
35	69 and 70
36	71 and 72
37	73 and 74
38	75 and 76
39	77 and 78
40	79 and 80
41	81 and 82
42	83 and 84
43	85 and 86
44	87 and 88
45	89 and 90
46	91 and 92
47	93 and 94
48	95 and 96
49	97 and 98
50	99 and 100

FILE COPY

No. [redacted] 92

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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

EDGAR D. WHITCOMB, Governor of the State of Indiana and Chairman of State Election Board,

Appellant

v.

PATRICK CHAVIS, ANDREW RAMSEY, MASON BRYANT, ROWLAND ALLEN, WILLIAM WALKER, JR., MARILYN HOTZ,

Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

MOTION TO DISMISS OR AFFIRM AND, IN THE ALTERNATIVE, EMERGENCY MOTION TO ADVANCE CASE AND TO SET EARLY DATES FOR FILING OF BRIEFS

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IN THE

Supreme Court of the United States

October Term, 1969

Edgar D. Whitcomb, Governor of the State of Indiana and Chairman of State Election Board,
Appellant

v.

Patrick Chavis, Andrew Ramsey, Mason Bryant, Rowland Allen, William Walker, Jr., Marilyn Hotz,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

MOTION TO DISMISS OR AFFIRM AND, IN THE ALTERNATIVE, EMERGENCY MOTION TO ADVANCE CASE AND TO SET EARLY DATES FOR FILING OF BRIEFS

The appellees move this Court to dismiss the appellant's appeal from the three-judge court's decision and order of

December 15, 1969* redistricting the State of Indiana or to affirm that order.

In the event, however, that this Court notes probable jurisdiction, then appellees move this Court for an order advancing this case and setting early dates for the filing of briefs because this case will seriously affect appellees and the people of Indiana in the 1970 elections and for as much as ten years or five elections thereafter if it is not decided prior to the 1970 elections.

MOTION TO DISMISS OR AFFIRM

I. WHAT THIS CASE IS ALL ABOUT

The principal holding below was that the apportionment of the Indiana General Assembly is grossly improper under the well settled principles of *Reynolds v. Sims,* 377 U.S. 533 (1964) and *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969). This holding is plainly correct in view of the wide disparities in population among the House and Senate districts. It is perfectly clear that the 24% deviation in House districts and the 28% deviation in Senate districts is far beyond the tolerance of the equal protection clause under *Kirkpatrick v. Preisler.* Thus this case is fundamentally an ordinary, garden variety reapportionment case and the correctness of the decision below is manifest.

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* The three-judge court issued a declaratory judgment rendering the Indiana legislative apportionment statute unconstitutional on July 28, 1969. The defendant, Governor Edgar D. Whitcomb, filed a jurisdictional statement with this Court which was given Docket No. 735. Subsequently, intervening defendants filed a separate jurisdictional statement which was docketed as No. 761, seeking review of the same order. Appellees' motions to dismiss or affirm those appeals are still pending.

A. *What the December 15, 1969 Order Does:*

The order of December 15, 1969 by the three-judge court divides the State of Indiana into 100 House of Representative districts. They are numbered 1 through 100. The districts are combined in numerical order to create 50 Senate districts.

In the House the total deviation is 1.9% and does not exceed 1% on either side of the mean. The Senate districts are even closer to the optimum population distribution.

The Court used 1960 census figures as did the courts in Missouri, *Kirkpatrick v. Preisler,* 394 U.S. 526 (April 7, 1969) and New York, *Wells v. Rockefeller,* 394 U.S. 452 (April 7, 1969) in preparing its plan.

B. *History of the Case—Why the December 15, 1969 Order Was Entered:*

(a) *January 12, 1969 Filing.* On January 12, 1969 appellees filed an action to declare the Indiana apportionment statute unconstitutional. At the trial the appellees asserted three reasons for declaring the statute unconstitutional. They are:

1. The Indiana Statute grossly violates *Reynolds v. Sims,* 377 U.S. 533 (1964) in light of *Kirkpatrick v. Preisler* and *Wells v. Rockefeller,* supra, because the total deviations of 24.780% for the House and 28.197% for the Senate are far beyond even the more flexible guidelines suggested by Justices Fortas, Harlan, Stewart and White in their dissenting opinions in those cases.

2. The multi-member districting of Marion County, Indiana (15 House seats and 8 Senate seats all elected from the County at large) results in an invidious discrimination as to the black ghetto residents in the district in violation of the 14th and 15th Amendments to the Constitution of the

United States and the principles set forth by this Court in *Fortson v. Dorsey,* 379 U.S. 433 (1965) and *Burns v. Richardson,* 384 U.S. 73 (1966).

3. All combinations of multi-member districts with single member or other multi-member districts of unequal size are unconstitutional even if the districts have representation in direct proportion to their population.

(b) *June 16, 1969 Trial.* On June 16, 1969 and June 17, 1969 the three-judge court heard evidence.

(c) *July 28, 1969 Decision.* On July 28, 1969, the three-judge court found the entire Indiana statute to be clearly defective under *Reynolds v. Sims,* supra; *Kirkpatrick v. Preisler,* supra; and *Wells v. Rockefeller,* supra, because of the gross population variations among districts. *Chavis v. Whitcomb,* 305 F.Supp. 1364 (D.C. Ind. 1969). The three-judge court also found the Indiana statute, as it applies to Marion County, Indiana (Indianapolis and suburban areas) to be clearly defective on the facts developed at the trial because the multi-member districting was shown to have the effect of diluting the voting rights of a cognizable racial minority, namely the black ghetto residents.

The three-judge court also gave consideration to the theory that all multi-member districting plans involving districts of unequal size and representation are inherently unconstitutional, but held that multi-member districts are not unconstitutional per se.

(d) *October 1, 1969 Extension of Time for Legislature to Act.* The three-judge court also indicated in its order and opinion that, while it was mindful of the need to expedite the reapportionment of the state in time for the 1970 elections, it would allow the state until October 1, 1969 to reapportion before any further action would be taken. The lower court waited and nothing happened.

(e) *November 3, 1969 Deadline for Proposing Plans.* Finally, on October 17, 1969, the lower court asked for reapportionment plans from the parties, including appellant, and from various legislative groups such as the committees on reapportionment. The plans were to be submitted by November 3, 1969. The lower court did not, however, cut off the legislature's authority to reapportion itself after October 1, 1969 and has never done so.

(f) *Plans Were Filed and Studied by the Court.* Plans were filed by a large number of groups including the appellees who filed a plan for Marion County alone. On December 15, 1969, the lower court entered an order in which it:

1. Adopted appellees' plan for Marion County as the only plan offered which met the requirements of one man-one vote and avoided racial discrimination.
2. Rejected all other plans, except one for Marion County, on the grounds that the population deviations were too great for a court adopted plan. The one for Marion County was rejected as violating *Fortson v. Dorsey* by joining seven parts of the ghetto with predominantly white voting populations.
3. Adopted its own plan for reapportionment of the remainder of the State. It is this plan, including appellees' plan for Marion County which appellant seeks to attack by this appeal.

II. REASONS TO DISMISS OR AFFIRM APPEAL

Appellant cannot support jurisdiction of the appeal of the December 15, 1969 order unless he can establish:

A. That the lower court abused its discretion in adopting a single member district plan when faced with the appellant's refusal to permit a legislative reapportionment.

B. That a state may not be required to reapportion more than once in a decade no matter how great the earlier disparity.

C. That the lower court abused its discretion by ordering emergency relief this late in the census decade.

III. NONE OF THESE QUESTIONS IS SUBSTANTIAL

A. *Lower Court Did Not Abuse Discretion in Adopting Single Member District Plan.* While evidence in the court below clearly supports the findings that the voting rights of black ghetto residents are diluted in Marion County by the present at-large districting, this issue is rendered moot by the further finding that the entire statute violated *Reynolds v. Sims* and *Kirkpatrick v. Preisler* and by the failure of the legislature to reapportion itself.

The lower court was left with the task of drawing an apportionment plan. This Court has held that artificial political boundaries are to be ignored if they cannot be reconciled with the requirements of equality of population. *Kirkpatrick v. Preisler,* supra. Thus, there remained no basis in this case for the drawing of a plan with multi-member district of varying sizes. The only reason for multi-member districts in the first place was to preserve county boundaries since some county boundaries must be violated in any event. Under the facts of this case, therefore, a dismissal or affirmance would *not* constitute a holding that multi-member districting plans adopted by legislature are unconstitutional, but would simply reflect the obvious and settled proposition that a court, faced with an inpermissible deviation among districts, must adopt a constitutionally acceptable plan.

Thus the single member districting by the lower court here presents no substantial question.

B. *Court Must Order Reapportionment Whenever it Finds State Apportionment Laws Unconstitutional.*

In 1965, the Indiana legislature reapportioned pursuant to court order. *Stout v. Bottorff,* 246 F.Supp. 825 (S.D. Ind. 1965) In the later case of *Stout v. Bottorff,* 249 F.Supp. 488 (S.D. Ind. 1965), the district court approved a legislative apportionment plan which it considered to be a best effort to achieve a constitutional apportionment without breaking county lines. However, this standard is no longer applicable, *Kirkpatrick v. Preisler,* supra. *Res judicata* is inoperative in the event of a major change in constitutional doctrine. *State Farm Mut. Auto Ins. Co. v. Diel,* 324 U.S. 154 (1945); *Christian v. Jemison,* 303 F. 2d 52 (5th Cir. 1962).*

In addition, in the earlier of the two lower court opinions in *Stout v. Bottorff,* supra, the court specifically recognized that new constitutional tests were a possibility and reserved for a plaintiff in that case the right to assert such claims. The court said:

> "The Third Supplemental Complaint of plaintiff Grills will be dismissed without prejudice to his right to assert any valid claims with respect to the matter of Indiana legislative apportionment in the future." 249 F.Supp. at 829.

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* Res judicata may also be inoperative because the named parties plaintiff in *Stout v. Bottorff* are not the same persons (nor do they represent the same interests) as those in the case at bar. It is unclear from the opinion whether or not the *Stout* case purported to be a class action on behalf of all citizens of Indiana. The Court's discussion does not treat the case as a class action.

Moreover, the apportionment plan approved in the second *Stout v. Bottorff* case was never appealed and was decided shortly after *Reynolds v. Sims* and long before the refinement of the guidelines had taken place in cases such as *Swann v. Adams,* 385 U.S. 440 (1967); *Sincock v. Gately,* 262 F.Supp. 739 (D.C. Del. 1967); *Long v. Docking,* 283 F.Supp. 539 (D.C. Kan. 1968).

C. *The Timeliness of the Lower Court's Order:*

The question of whether an apportionment can be ordered this late in the decade, and on the basis of 1960 census figures, has already been answered by this Court. *Kirkpatrick v. Preisler,* supra, and *Wells v. Rockefeller,* supra, both involve use of the 1960 census figures for redistricting for the 1970 election. Even the dissenting Justices did not question this point. Thus the lower court here cannot be found to have abused its discretion to determine that justice requires a reapportionment in Indiana at the close of the decade even though other lower courts may, on different facts or even the same facts, have reached a contrary conclusion.

Since the legislature elected in 1970 will, in all likelihood, reapportion and redistrict the state for the next decade, justice in fact demands that it be a constitutionally sound legislature.

Moreover, other than the 1960 census, there are no figures sufficiently detailed, or of statewide application, or known to be reasonably accurate which can be used to reapportion the state. Figures relied upon by appellant for Marion County were not submitted at the trial, are not of statewide application and are nothing more than estimates based upon building and demolition permits.

Finally, the decennial census is the only constitutionally sanctioned method for resolving this problem. A clear rule endorsing its use throughout each decade will avoid widespread and repetitious litigation.

Appellant's references to decisions of other counts in December of 1969 are also inapposite in view of the lower court's determination in July that the Indiana apportionment act was defective. The delay until December was solely to permit the state legislature to avoid the need for judicial action. Finally, appellant does not dispute the basic factual determination that the statewide apportionment is grossly unconstitutional and at large districting dilutes the voting rights of inner-city residents. These considerations fully justify the lower court's order under the circumstances of this case.

IV. OTHER MATTERS RAISED BY APPELLANT

A. The question of gerrymandering raised by appellant's second and sixth numbered questions is not presented by this case. The plan of apportionment does not track racial lines, but simply protects the voting power of inner city residents. See the map attached as Appendix A to this motion superimposing the reapportionment plan on the ghetto area of Indianapolis and demonstrating that the factual premise of appellant's issue is lacking in this case.

B. Appellant's third numbered issue is wholly insubstantial. It is well settled that issues tried by consent of the parties are properly tried in the federal courts and the pleadings are treated as amended to conform to those issues. Fed. R. Civ. Proc. 15(b). The question of the constitutionality of the entire statutory apportionment plan was raised at the outset of the trial on June 16, 1969 and was tried by consent. Moreover, plaintiff William Walker is a resident of Lake County (East Chicago) and did complain initially of his underrepresentation. (See complaint in record of No. 735) The disparity of representation between

Lake and Marion County was over 18% in the statutory apportionment of the Indiana Senate and favored the latter county. (See Appendix to Jurisdictional Statement in No. 735, pg. 50)

V. CONCLUSION

Appellees pray that this appeal be dismissed or that the decision in the lower court be affirmed summarily.

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ALTERNATIVE EMERGENCY MOTION TO ADVANCE CASE AND TO SET EARLY DATES FOR FILING BRIEFS

On February 5, 1970 the appellees sought advancement of this case on the docket of this Court and early deadlines for filing briefs. On February 6, 1970 this Court denied appellees' motion "without prejudice to its renewal following the filing of the statement as to jurisdiction."

In the event that this Court should note probable jurisdiction, the reasons for advancement of the case pursuant to Rule 43(4) and for early deadlines for filing briefs pursuant to Rule 41(4) are as follows:

Appellant in no way contends that the lower court's finding under *Fortson v. Dorsey,* 379 U.S. 433 (1965) is incorrect or not legal or that the finding of a general malapportionment is in any way incorrect. No issue of any complexity is presented in this cause.

1. In view of the impending Indiana primary election, this case cannot await decision in the normal course of the Court's docket. Both sides agree. See memoranda support-

ing and opposing stay filed January 29, 1970 and January 31, 1970.

2. The present Indiana apportionment statute, apparently revived by this Court's stay granted February 2, 1970, is plainly unconstitutional under *Reynolds v. Sims,* supra, and *Kirkpatrick v. Preisler,* supra, and the three-judge court's decision on this issue is obviously correct in view of the 28% population variance among the various districts.

3. Under the Court's customary schedule the stay order granted by this Court on February 2, 1970 will preclude the black ghetto population of Indianapolis, Indiana from having any representatives of their choosing in the forthcoming Indiana General Assembly election because filing opens on February 24, 1970 for legislative candidates.

4. The stay will thus preclude the black ghetto population from having representatives of their choosing who will participate in the apportionment of legislative seats and congressional districts for the decade of the 70's because the next Indiana legislature will meet in January of 1971 and will be charged with that responsibility due to the 1970 decennial census.

5. This case affects voting rights for more than a single election and is, therefore, of tremendous importance to the appellees and to the citizens of Indiana.

6. The black ghetto population of Indianapolis, under the guidelines of *Fortson v. Dorsey,* supra, was found by the lower court, as a matter of evidence, to be a cognizable racial element of the voting population of the district (Marion County, Indiana) whose vote is minimized by the present multi-member districting scheme now in effect.

7. The only difference between this case and the cases of *Wells v. Rockefeller,* supra, and *Kirkpatrick v. Preisler,* supra, is the special finding of fact relating to the black

ghetto residents of Indianapolis in accordance with *Fortson v. Dorsey,* supra. The lower court has merely applied *Fortson v. Dorsey* to the facts. All issues have been thoroughly briefed in the lower court and will require little more than copy work for re-briefing here.

8. The only new issue raised is whether reapportionment can properly take place at this point in the decade. Appellees want to be heard if this is the basis for the court's granting of the stay.

9. The entire record of this case, and nos. 736 and 761, has already been filed with the Clerk. Appellant's jurisdictional statement and appellees' motions to dismiss or affirm are on file in this case and in nos. 735 and 761 pending in this Court.

10. Briefing in this case can be accelerated and advanced as has been done in other reapportionment cases, *Scott v. Germano,* 381 U.S. 407, (1965), (23 days between decision of district court and final decision on appeal to this Court). Resources available to the appellant are far greater than those of the appellee and appellee is prepared to brief and argue this case *now.*

11. All delays in seeking review of this case have been caused by the appellant and appellees have never used more than a fraction of their time at any stage in the lower court or in this Court.

12. Appellant has avoided the merits at all times and has sought delay, and to now permit a state official to gain substantive benefits by the tactic of delay will cause this Court's voting rights mandates to suffer the same fate which school desegregation mandates have suffered for sixteen years. Cf. *Alexander v. Holmes County Board of Education,* 24 L.Ed. 2d 19 (1969).

WHEREFORE, if this Court notes jurisdiction, appellees pray for the advancement of the case and of the deadlines for filing briefs so that a decision may be rendered on the merits and appellees will have their rights protected in the 1970 election.

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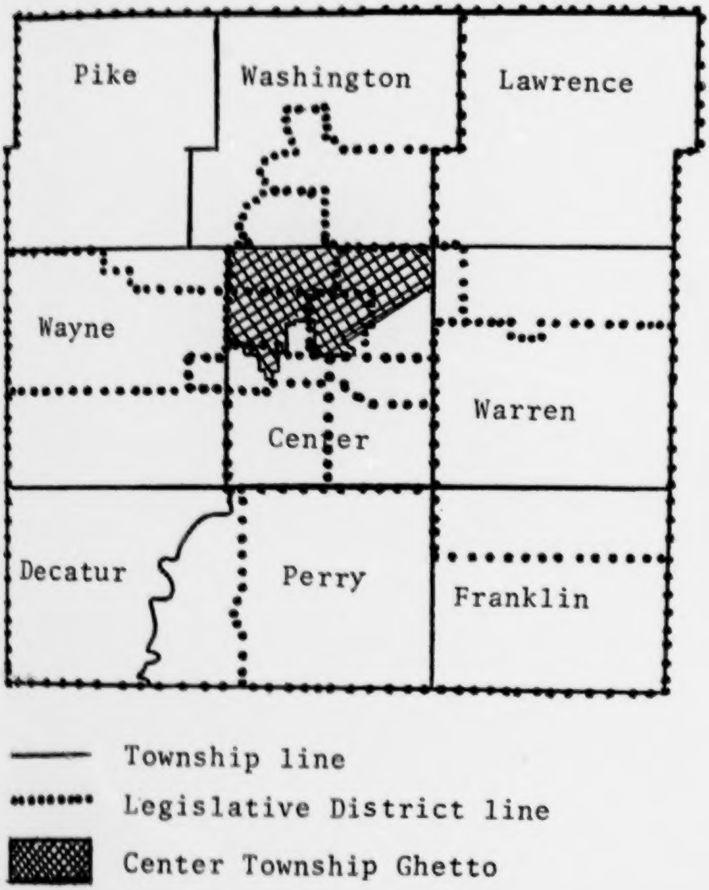
APPENDIX A

MARION COUNTY, INDIANA


Pike
Washington
Lawrence
Wayne
Warren
Center
Decatur
Perry
Franklin
Township line
Legislative District line
Center Township Ghetto

The two maps are drawn from the lower court's opinion 305 F. Supp. at 1381 (Center Township Ghetto) and the plaintiffs' proposed apportionment plan filed with the record in this Court and adopted by the lower court.

IN THE

Supreme Court of the United States

October Term, 1969

No. 1198

Edgar D. Whitcomb, Governor of the State of Indiana,
Appellant,

v.

Patrick Chavis, Andrew Ramsey, Mason Bryant,
Rowland Allen, William Walker, Jr., Marilyn Hotz,
Appellees.

On Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM AND APPELLEES' ALTERNATIVE MOTION TO ADVANCE

APPELLANT'S RESPONSE TO APPELLEES' MOTION TO DISMISS OR AFFIRM.

Appellees do not challenge the jurisdiction of this Court to hear this appeal as not taken in conformity to statute or to the Rules of this Court under Rule 16.1(a) of this Court. Appellees challenge this appeal solely on the grounds that it presents no substantial federal question.

Whether the lower court abused its discretion in adopting a single member districting plan is not the issue. The issue is whether the district court erred, as a matter of law, when, in view of the facts of this cause, it adopted a single member districting plan. Appellees would disengage the plan adopted by the district court from that court's determination in this cause that the Marion County multi-member district was unconstitutional. The lower court's single member districting plan is part and parcel of, and flows directly from, that court's determination that the Marion County multi-member district was unconstitutional. The single member districting plan adopted by the district court was the court's solution to a dilution of some votes which the court supposed to exist in the Marion County multi-member district. Viewed in this light, whether the lower court erred in adopting a single member district plan presents a substantial federal question.

Whether a court must order reapportionment whenever it finds state apportionment laws unconstitutional is not, as Appellees contend, the issue. The Indiana General Assembly constitutionally reapportioned the state legislature in 1965 with the approval of the same district court which acted in this cause. *Stout v. Bottorff*, 249 F. Supp. 488 (D.C. Ind. 1965). This Court has held a rational approach to reapportionment would require a state to reapportion constitutionally but once between each decennial census. *Reynolds v. Sims*, 377 U.S. 522, 583-584 (1964). Thus the question is whether a state should be required to constitutionally reapportion more than once between decennial censuses. This presents a substantial federal question.

Appellees do not take issue with Appellant's position that the 1960 census figures are out-moded and are no longer reliable in view of obvious and substantial changes and shifts in population since 1960. In citing *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969) and *Wells v. Rockefeller,* 394 U.S. 452 (1969), Appellee does no more than concede that the issue Appellant seeks to raise in this regard was simply not decided by those cases. Appellees' position would appear to be that an unconstitutionally constituted Legislature cannot constitutionally reapportion. If Appellees' position were taken to its logical conclusion, it would be necessary for the federal courts to reapportion whenever and wherever it found malapportionment. This Court has never prohibited a political subdivision of a state from reapportioning itself notwithstanding a finding that the political subdivision in question was malapportioned. Whether the 1960 census may serve as a sound basis for reapportionment in the waning days of the 60's is a substantial federal question.

APPELLANT'S RESPONSE TO APPELLEES' ALTERNATIVE EMERGENCY MOTION TO ADVANCE CASE AND TO SET EARLY DATES FOR FILING BRIEFS.

Contrary to Appellees' assertion, Appellant has caused no delay in this case. At all times, Appellant has acted within the time allowed by the statutes and the rules of this Court governing appeals to this Court. Appellant does not seek a delay now.

Appellees would have this Court advance the time for filing all briefs in this cause. However, an immediate determination would serve no interest of the parties to this cause for the reason that a determination by this Court at this time would place the parties in the same position they are now. The state constitutionally reapportioned in 1965. See *Stout v. Bottorff,* 249 F.Supp. 488 (D.C. Ind.

1965). And as this Court said in *Reynolds v. Sims*, 377 U.S. 533, 584 (1965), a state need only reapportion constitutionally once between every decennial census. Furthermore, reapportionment at this time could only be based on 1960 census data, the only census data presently available for the entire state. But as Appellant argued in its "Application for Stay" of January 29, 1970, the 1960 census data is unreliable and outdated and if used as a basis for reapportioning the state at this time would produce an unconscionable unconstitutional result. In any event, the 1970 census data will soon be available.

The issues in this cause are novel and significant. Appellees' theory, adopted by the district court, is ingenious, but erroneous. The ramifications of Appellees' theory have an immediate and far reaching impact. To fully brief, argue and decide this cause in haste removes the full measure of considered thought which this complex case requires.

Appellees present no sound compelling reason to this Court for advancing this cause. Appellees assert that Appellant agrees that ". . . [i]n view of the impending Indiana primary election, this case cannot wait decision in the normal course of the Court's docket. . . ." That Appellant agrees is a misrepresentation. Appellant has agreed to nothing. Appellees' reference to the forthcoming primary election is misleading. Appellees imply that ". . . the impending Indiana primary election . . ." is a significant date on the election calendar *for this cause*. This is simply not so. Under state law, the machinery of the fall election was irrevocably in motion on February 24, 1970. The district and precinct lines must be set on that date. Whatever districting plan is in effect on that date must of consequence be the plan for the fall election The Indiana primary election is merely a mile-marker along the way. The state has no legal means at its disposal at this time for conducting the fall election under a plan of reapportionment other than the one in effect on February 24, 1970 (i.e. The Indiana Apportionment Act of 1965).

CONCLUSION

28 U.S.C. § 1253 authorizes this appeal. Appellant presents substantial federal questions in this appeal requiring plenary consideration, with briefs on the merits and oral argument for their resolution. Thus Appellees' Motion to Dismiss or Affirm should be denied.

Appellees present no sound compelling reason to this Court for advancing this cause. Thus, Appellees' Emergency Motion to advance this cause should be denied.

Respectfully submitted,

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Attorneys for Appellant

FILE COPY

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IN THE

Supreme Court of the United States

October Term, 1969

No. [illegible] 92

EDGAR D. WHITCOMB, Governor
of the State of Indiana
Appellant,

v.

PATRICK CHAVIS, et al.

On Appeal From The United States District Court
For The Southern District of Indiana,
Indianapolis Division

BRIEF FOR APPELLANT

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Argument:

I. The Decision of the District Court Declaring the Multi-Member Districting Provisions of the Indiana Apportionment Act of 1965, As They Related to Marion County, Should Be Reversed Because It Was the Result of a Faulty Analysis Leading the District Court to the Erroneous Conclusion That the Situs of the Residence of Legislators Elected from Marion County Predetermined their Voting Pattern. 20

II. The Decision of the District Court Reapportioning the State of Indiana Should Be Reversed Because It Designedly Protects the Geographical and Political Solidarity of a Cognizable Racial Minority Group Found to Reside Within the Center Township Ghetto Area for the Sole Purpose of Preserving Its Political Voting Strength. 33

III. The Decision in the Case of *Stout* v. *Bottorff*, 249 F. Supp. 488 (D.C. Ind. 1965), Upholding the Constitutionality of the Indiana Apportionment Act of 1965, Served to Bar the District Court From Declaring Unconstitutional the Multi-Member Districting Provisions of the Same Act, As

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They Related to Marion County, and Served to Bar the District Court From Actually Reapportioning the State of Indiana, in View of This Court's Decision In *Reynolds* v. *Sims,* 377 U.S. 533, 583 (1964), Limiting the Necessity to Reapportion Constitutionally to Once Between Each Decennial Census. 35

IV. The District Court's Order Apportioning Districts for the State Legislature On the Basis of the 1960 Census Data Should Be Reversed Because of Substantial Changes and Shifts In Population Since 1960 Rendered the 1960 Census Data Obsolete and Unreliable, and Because the 1970 Census Data Would Be Available to the Next Regular Session of the State Legislature for the Purpose of Reapportioning the State. 38

V. The District Court Committed Reversible Error When It Required Single-Member Districts Throughout the State Because There Was a Clear State Preference for Some Multi-Member Districts and Because There Was An Absolute Absence of Evidence to Show That the Multi-Member Districts in the State Other Than Marion County Were in Any Way Constitutionally Infirm. 43

VI. The Court Ordered Districting Plan Should Be Reversed Because It Created Senate Districts Which Crossed County Lines Contrary to the Prohibition of Art. 4, § 6, of the Indiana Constitution and Because the Districting Plan Devised By the Court Operated to Deprive Twenty-Five Duly Elected Senators of the Right to Serve Their Full Term As Required By Art. 4, § 3, of the Indiana Constitution, and Thus Also Violated the Fourteenth Amendment to the Constitution of the United States. 46

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IN THE

Supreme Court of the United States

October Term, 1969

No. 1198

Edgar D. Whitcomb, Governor
of the State of Indiana
Appellant,
v.
Patrick Chavis, et al.

On Appeal From The United States District Court
For The Southern District of Indiana,
Indianapolis Division

BRIEF FOR APPELLANT

OPINIONS BELOW

The opinion of the district court in which it declared the multi-member districting provisions of the Indiana Apportionment Act of 1965, as they related to Marion County, unconstitutional is reported at 305 F.Supp. 1364 and also appears in the Appendix in this cause. (A. p. 335). The opinion and order of the district court reapportioning the state is reported at 307 F.Supp. 1362, and appears in the Appendix in this cause. (A. p. 390).

JURISDICTION

A three judge panel was convened to hear this cause. The order of the district court reapportioning the State of Indiana was entered on December 15, 1969. (A. p. 390). A timely notice of appeal from that order was filed with the district court on December 22, 1969. On February 18, 1970, the case was docketed, with the filing of a jurisdictional statement. Probable jurisdiction was noted on March 23, 1970. (A. p. 425). The jurisdiction of this Court rests on 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Indiana Acts of 1965 (2d Spec. Sess.) ch. 5, § 3 and ch. 4, § 3, as found in Burns' (1969 Repl.), §§ 34-104 and 34-102, respectively, as they related to Marion County, State of Indiana are the state laws involved in this cause. Although only the multi-member districting provisions of this Act, as they related to Marion County, were declared unconstitutional in this cause, the entire act, hereafter referred to as the Indiana Apportionment Act of 1965, has been included and appears in the Appendix in this cause. (A. p. 426).

U.S. Const. amend. XIV, § 1 provides in part that:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law."

Ind. Const. art. 4, § 3, provides that:

Term of Office.

> "Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: Pro-

vided, however, that the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class, at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable."

Ind. Const. art. 4, § 6, provides that:

Districts.

"A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall never be divided."

Ind. Const. art. 4, § 22, provides that:

Local or special laws forbidden.

"The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

1. Regulating the jurisdiction and duties of justices of the Peace and of Constables;
2. For the punishment of crimes and misdemeanors;
3. Regulating the practice in courts of justice;
4. Providing for changing the venue in civil and criminal cases;
5. Granting divorces;
6. Changing the names of persons;
7. For laying out, opening and working on high ways, and for the election or appointment of supervisors;
8. Vacating roads, town plats, streets, alleys and public squares;

> 9. Summoning and impaneling grand and petit juries, and providing for their compensation;
>
> 10. Regulating county and township business;
>
> 11. Regulating the election of county and township officers and their compensation;
>
> 12. For the assessment and collection of taxes for State, county, township, or road purposes;
>
> 13. Providing for supporting common schools, and for the preservation of school funds;
>
> 14. In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;
>
> 15. In relation to interest on money;
>
> 16. Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;
>
> 17. Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees."

Ind. Const. art. 4, § 23, provides that:

Laws must be general.

> "In all the cases enumerated in the preceding Section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State."

QUESTIONS PRESENTED FOR REVIEW

1. Whether the decision of the district court reapportioning the State of Indiana must be reversed because its judgment that the multi-member districting provisions of the Indiana Apportionment Act of 1965, as they related to Marion County, was the result of a fault-ridden analysis erroneously based on social, racial and economic factors and based on the situs of the residence of legislators elected from Marion County.

2. Whether the decision of the district court reapportioning the State of Indiana should be reversed because it was expressly designed to freeze in place the geographical and political integrity of a cognizable racial minority group found to reside within the Center Township Ghetto area for the sole purpose of preserving its voting strength.

3. Whether the decision of the district court in the case of *Stout v. Bottorff*, 249 F.Supp. 488 (D.C. Ind. 1965), upholding the constitutionality of the Indiana Apportionment Act of 1965, served to bar the district court from declaring unconstitutional the multi-member districting provisions of the same Act, as they related to Marion County, or served to bar the district court from actually reapportioning the State of Indiana, in view of this Court's decision in *Reynolds v. Sims*, 377 U.S. 533, 583 (1964), limiting the necessity to reapportion constitutionally to once between each decennial census.

4. Whether the district court erroneously apportioned districts for the state legislature on the basis of the 1960 census data, even though substantial changes and shifts in populaton since 1960 had rendered the 1960 census data unreliable and even though the 1970 census data would be available to the next regular session of the state legislature for the purpose of reapportioning the State.

5. Whether the district court erroneously required single-member districts throughout the State, even though there was a clear state preference for some multi-member districts and even though there was an absence of evidence that multi-member districts in the state other than Marion County were in some way constitutionally infirm.

6. Whether the court-ordered districting plan should be reversed because it created senate districts which crossed county lines contrary to the prohibition of Article 4, § 6, of the Indiana Constitution and because the districting plan

devised by the court operated to deprive twenty-five duly elected senators of the right to serve out their full four year term as required by Article 4, § 3, of the Indiana Constitution, in violation of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

The history of Indiana's efforts to reapportion the districts for the Indiana General Assembly, constitutionally, began with the district court's decision in *Stout v. Hendricks,* 228 F.Supp. 568 (D.C. Ind. 1963), which declared unconstitutional a 1921 Act apportioning districts for the state legislature. The district court enjoined the state from conducting any further elections for the state legislature under the 1921 Acts, but postponed the effect of the injunction until after the 1964 elections.

During the 1963 regular session of the state legislature a new apportionment act was passed, but was vetoed by the Governor. The legislature failed to override the Governor's veto. Subsequently, the Indiana Supreme Court effectively set aside the veto and the 1964 elections were conducted under the 1963 Act.

The 1965 regular session of the state legislature again enacted legislation reapportioning the state. However, the district court found these acts to be constitutionally infirm in *Stout v. Bottorff,* 246 F.Supp. 825 (D.C. Ind. 1965).

In response to the district court's decision in the first *Stout* case, *supra,* a second special session of the state legislature was convened on October 18, 1965. In its second special session of that year, the state legislature enacted four acts apportioning the Senate and four acts apportioning the House of Representatives. The acts were then submitted to the district court as plans to be considered in the alternative. These alternative acts were considered by the district court in what may be called the second *Stout* case. *Stout v. Bottorff*, 249 F.Supp. 488 (D.C. Ind. 1965). Of the plans submitted, the district court selected what were referred to in its opinion as Senate Plan B and House Plan C, which that federal district court said met federal constitutional standards. Senate Plan B and House Plan C were what will be referred to subsequently in this brief as the Indiana Apportionment Act of 1965, Indiana Acts of 1965 (2nd Spec. Sess.) chapters 4 and 5, as found in Burns (1968 Repl.), §§ 34-101, *et seq.* It is § 3 of each of these chapters, as it related to Marion County, which the district court in 1969 found to be unconstitutional in this cause.

Voter population data were the basis for the Indiana Apportionment Acts of 1965, approved by the district court as meeting federal constitutional standards in the second *Stout* case, *supra*. Using voter population data, the district court found that, as to the Senate, there were only two instances where the sum of the extreme deviations above and below the ideal resulted in overall deviations in excess of 20%. In all other instances, the sum of the deviations above and below the ideal was less than 20%. The ratio of the district with the largest population per senator to the smallest district was 1.27 to 1. The minimum percentage of total voting population residing in districts which could elect a majority of the senators was 49.46%. 249 F.Supp., at p. 491.

As to the House of Representatives, the district court found, in one instance, an overall deviation in excess of 20%. In all other instances, the sum of the deviations above and below the ideal was less than 20%. The ratio of the district with the largest population per representative to the smallest was 1.26 to 1. The minimum percentage of voters which could elect a majority of the House of Representatives was 48.72%. 249 F.Supp., at p. 493.

In approving the constitutionality of the Indiana Apportionment Act of 1965, the district court expressly found the Act to be an acceptable accommodation between the State and Federal Constitutions. The district court said:

> "With respect to the requirements of Indiana law: Under Senate Plan B and House Plan C the counties are contiguous; no county has been divided for senatorial districts; and each county with a ratio is represented by a member of the legislature. Wherever practicable, the General Assembly avoided grouping one county with less than a ratio in a district with other counties to give the former a voice in electing more than one member; and wherever practicable it had avoided forming districts containing large fractions unrepresented while providing overrepresentation for other districts.
>
> "We think that the foregoing relation of Senate Plan B and House Plan C to the federal and state standards shows a harmonious accommodation of both in solving a difficult problem." (Footnotes omitted.) 249 F.Supp., at p. 494.

This cause was initiated when plaintiffs-appellees, hereafter referred to as voters, representing various interests within the state, instituted a declaratory action for a judgment declaring that the multi-member districting provisions of the Indiana Apportionment Act of 1965, as they related to Marion County, operated invidiously to deprive certain voters of the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States. In their complaint, the appellees limited their attack to the multi-member districting provisions of the Indiana Apportionment Acts of 1965 as they related to Marion County. (A. pp. 1, 340).

A three-judge panel was convened to hear the case. The court refused to hear the case as a class action. Consequently, the appellees proceeded in their individual capacities.

With the exception of Walker, all of the appellees in this cause were residents of Marion County. Walker was described as a Negro resident of Lake County, Indiana, another multi-member district within the state. Of the five appellees who were residents of Marion County, namely Chavis, Ramsey, Hotz, Allen and Bryant, only Mason Bryant was a resident and voter of what the district court defined as the "Center Township Ghetto." Chavis was described as a voter and resident of Marion County, Indiana, within the City of Indianapolis, but outside the "Center Township Ghetto." Although Ramsey, a Negro-American, was described as a voter and a resident of the "Center Township Ghetto," within Marion County, there was no evidence that he did in fact reside within the "Center Township Ghetto." (A. p. 376). Hotz was described as a White-American, a voter and a resident of Marion County outside the City of Indianapolis. Allen was described only as an independent voter residing within Marion County. (A. pp. 336-341, 373-376).

The district court found that the multi-member districting scheme of the Indiana Apportionment Act of 1965, as to Marion County only, unconstitutionally minimized and rendered ineffective the vote of Negroes residing in the "Center Township Ghetto," thereby necessitating a redistricting of Marion County. (A. p. 376). Thus, it reasoned, the multi-member districting provisions of the Indiana Apportionment Act of 1965, Acts of 1965, (2nd Spec. Sess.), ch. 5, § 3 and ch. 4, § 3, as found in Burns' (1968 Repl.), §§ 34-104 and 34-102, respectively, as they related to Marion County, operated to minimize and cancel out the voting strength of a cognizable racial minority group (the "Center Township Ghetto") and were found to be unconstitutional because they deprived that group of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States. (A. pp. 331-332).

The district court also found that the evidence established that Mason Bryant was a resident and voter of the "Center Township Ghetto," with proper standing to sue, and thus entitled to the relief for which he prayed in his complaint. (A. p. 376). However, there was a failure of proof as to all other voters who were parties to the action. (A. pp. 373-376).

The "Center Township Ghetto" is an area within Marion County, Indiana, which was delineated by boundaries selected by the district court itself. It is inhabited by what the district court found to be a cognizable racial group. A "ghetto" was defined as:

> "A primarily residential area of an urban area characterized by higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a racial, ethnic, or other minority group, most of whom are of lower socio economic status than the prevailing economic status in the metropolitan area and whose residence in the section is often the result of social, legal, or economic restrictions or custom." (A. p. 348).

Applying this definition, the district court found that a cognizable racial group resided in an area denominated by the district court as the "Center Township Ghetto." The district court defined the "Center Township Ghetto" as consisting of 1960 census tracts 501-520, 528-531, 534-536, 540, those portions of 521-523 which are north Massachusetts Avenue and those portions of 537 which are north and east of White River. The 1967 population of the ghetto so defined consisted of 97,000 non-whites (of whom approximately 99.8% are Negro) and 35,000 Whites. (A. p. 349; see also A. p. 360, for a map illustrating the "Center Township Ghetto").

Marion County is composed of nine townships and numerous census tracts. To show that the "Center Township Ghetto" was populated by a homogenous group which was sufficiently differentiated from the rest of the county to be entitled to "native" legislators, ten census tracts were selected from two townships within Marion County. Two census tracts were selected from Washington Township, tracts 211 and 220, and eight census tracts were selected from Center Township, tracts 507, 511, 517, 530, 535, 537, 540 and 563. Of the eight census tracts for Center Township, only one census tract, tract 563, was wholly outside the "Center Township Ghetto." Only a portion of census tract 537 was outside the "Center Township Ghetto," while the remaining six census tracts were wholly within the "Center Township Ghetto." (A. pp. 349-350).

The district court analyzed and compared the census tracts on the basis of housing characteristics, social characteristics, and economic characteristics gleaned from other studies. All comparisons included the percentage of white versus non-white residents for 1960 and 1967. Housing characteristics involved a consideration of such factors as the percentage of: non-white dwelling units, crowded dwelling units, owner occupied dwellings, housing units built prior to 1940 and dilapidated and deteriorated housing. (See Table 1, A. p. 351). Social or sociological characteristics involved a consideration of the percentage of: recipients of old age assistance (Social Security), persons over the age of twenty-five having completed high school, juvenile delinquency cases and the rate of unemployment. (See Table 2, A. p. 352). Economic characteristics involved a consideration of median family income for 1959, 1969 and projections for 1985 and a projected estimate for automobile ownership per family for the year 1985. (See Table 3, p. 353).

Based on the analysis in the tables illustrating housing, social and economic characteristics for selected census tracts in Center and Washington Townships, of Marion County, a fourth table was prepared rearranging and setting out in one table the information contained in the former three tables. (See Table 4, Critical Differentiating Characteristics, A. pp. 354-355). In the differentiating table, two census tracts, tracts 211 and 563 were omitted. Seven tracts from the "Center Township Ghetto" were compared to one tract, tract 220, from Washington Township.

In the district court's opinion, there were statistical differences between Tract 220 and the Ghetto tracts which represented compelling interests in such legislative areas as urban renewal and rehabilitation, health care, employment training and opportunities, welfare and relief for the poor, law enforcement, quality of education, and anti-discrimination measures. (A. p. 358). These, the court found, were interests solely of the Ghetto.

Based on an analysis of Tables 1, 2, 3 and 4, the district court concluded that the "Center Township Ghetto" was characterized by a predominately Negro population having a lower income, having a higher juvenile crime rate, and having a higher unemployment rate than the rest of Marion County. The district court concluded that some of the characteristics upon which it relied would continue into the future as far as 1985, based on certain of its projected estimates. (A. pp. 21-24).

Having set apart an area of Marion County and having given it a name, the district court compared the number of residents of the "Center Township Ghetto" who were elected to the state legislature during the preceding ten years with the number of residents of Washington Township who were elected to the state legislature during the same period. The areas selected were compared on the basis of the ratio of legislators to population of each area. First, a ratio for the number of legislators elected to the state legislature during the preceding ten years who resided in Washington Township to the entire number of legislators elected from Marion County was computed. A similar ratio was computed for legislators who were residents of the "Center Township Ghetto." Secondly, a ratio for the population of Washington Township to the population of all of Marion County was computed. A similar ratio was computed for the "Center Township Ghetto." (See Table 7, A. p. 362). The ratios computed in the first and second steps were then compared. On comparison, the ratios showed that more legislators per person resided in Washington Township, comparing the number of legislators who were resident in Washington Township to the number of persons who resided in Washington Township, than resided in the "Center Township Ghetto." (A. pp. 363-364; see also Table 8, A. p. 363). Nevertheless, all legislators chosen for comparison purposes were residents of Marion County.

This, in the court's opinion, was evidence of the overrepresentation of Washington Township and the underrepresentation of the "Center Township Ghetto." The district court concluded that, since disproportionately fewer legislators elected to the state legislature from Marion County were residents of the Ghetto than were residents of Washington Township, therefore the votes of residents within the "Center Township Ghetto" were diluted, minimized, and cancelled out.

Certain other political factors, in the district court's opinion, also tended to minimize the votes of residents of the "Center Township Ghetto." First, the court said that because positions taken on political issues by legislators elected from Marion County at large tended to coalesce, causing these legislators to maintain a common undifferentiated position, the representation of minority interest groups within the county was "obviated." (A. p. 364). Secondly, the court said that county organizations of the two major political parties of Marion County, particularly the county chairmen, exerted a very substantial influence over the nomination of candidates for the state legislature. (A. p. 365). And finally, the court made the observation that Marion County political organizations continued to exert considerable control over the actions of legislators from Marion County after they are elected. (A. p. 365).

The district court found that the only practical remedy for the deprivation of voting strength was the elimination of the large multi-member house and senate district for Marion County. (A. p. 332).

The district court concluded that a redistricting of Marion County was neccessitated. Conceding that the voters had directed their complaint to bring about a redistricting of Marion County only, the district court went on to consider other evidence applying to both Marion County and the state of Indiana as a whole. (A. p. 376). First of all, the district court considered the testimony of John Banzhaf, an Associate Professor of Law at George Washington University. (A. pp. 139-155). Banzhaf testified that, based on his theoretical mathematical analysis, a voter in a multi-member district, having more legislators from which to choose, has a greater theoretical opportunity to cast a critical or deciding vote in any legislative election, than say a voter in a single-member district. Furthermore, theoretically, when representatives of a multi-member district vote as a bloc in a legislative body, each representative's vote has a greater weight than that of a representative of a single-member district. Moreover, the district court concluded that each Marion County voter has a greater voice in the legislature than does a comparable voter in a single-member district. (A. pp. 141-149; Court's Opinion, p. 378). Secondly, in applying 1960 census data and 1967 Indiana Board of Health vital statistics data to the districts created by the Indiana Apportionment Act of 1965, the district court found that the variances among the districts exceeded the guidelines laid down by this Court. (A. pp. 369-371, 381-55). Thus, applying 1960 and 1967 population data, the district court found that to redistrict Marion County alone would leave the legislature confronted with impermissible population variations between the new Marion County districts and other districts in the state. (A. pp. 332, 369, 377, 391). Furthermore, applying Banzhaf's analysis, the district court concluded that any redistricting scheme must provide for uniform districts. (A. p. 379).

Accordingly, on July 28, 1969, the district court declared the multi-member districting provisions of the Indiana Apportionment Act of 1965, as they related to Marion County, unconstitutional. The district court then gave the state until October 1, 1969, to enact new apportionment legislation. (A. pp. 331, 334).

On October 15, 1969, the district court took judicial notice of the fact that the state legislature had not enacted new legislation apportioning the state. Consequently, the district court concluded that it would redistrict the state. (A. p. 392). The district court invited proposed plans from the parties and legislative leaders. On October 17, 1969, the district court announced minimal guidelines for submission of proposed plans. The district court announced that 1960 census data would be used as the basis for reapportioning, that single member districts would be preferred to multi-member districts, and that county and township lines would be crossed when necessary. (A. p. 392).

On December 15, 1969, the district court entered a second order. (A. pp. 390-420). The district court enjoined all state election officials from conducting any primary, general or special elections for state legislature under the Indiana Apportionment Act of 1965. Further, the district court mandated all state election officials to conduct all primary, general and special elections for the year 1970 for the state legislature by use of the districts created and described by the district court in its order. (A. pp. 399-400; For the court's plan, See A. pp. 401-420). The plan adopted by the court, in the district court's own words, ". . . protects the legally cognizable racial minority group against dilution of its voting strength. . . ." (A. p. 395). The district court also said that "[i]n establishing district lines for the metropolitan areas of the state, the Court has taken judicial notice of the 1960 census statistics as to the location of the non-white population [;] [t]he single-member district plan gives recognition to the cognizable racial minority group whose grievance led to this litigation." The plan adopted by the district court was based on 1960 census data and required single-member districts; it also crossed county lines and prevented twenty-five (25) senators elected to 4-year terms in 1968 from serving the remaining two years of their four-year terms. (A. pp. 397-398).

SUMMARY OF ARGUMENT

The judgment of the district court reapportioning the state of Indiana was based on an invalid premise that the multi-member districting provisions of the Indiana Apportionment Act of 1965 as they related to Marion County were unconstitutional.

The invalid premise upon which the district court's decision was based was its earlier judgment that the multi-member districting provisions of the Indiana Apportionment Act of 1965, as they related to Marion County, were unconstitutional. That the "Center Township Ghetto" existed was a statistical inference based on other statistical inferences, and hence gross speculation. Even conceding the existence of the "Center Township Ghetto," the situs of the residence of legislators elected from Marion County is not in and of itself evidence that the interests of the residents of the ghetto were treated in the state legislature any differently than interests of the residents of the rest of the county. Furthermore, the sole basis for differentiating the "Center Township Ghetto" from the rest of the county was social, racial and economic factors supposedly prevailing in the ghetto. The one-man one-vote principle enunciated by this Court does not recognize such social, racial and economic factors as controlling. In any event, at best, the appellees have shown no more than that the residents of the ghetto have special interests. However, the principle of proportional representation in government, enunciated by this Court, had never required, and indeed should not require, proportional representation for special interest groups. This violates the spirit as well as the letter of American Constitutional Law.

The court ordered districting plan was expressly designed to protect the geographical and political integrity of a cognizable racial minority group found to reside within the "Center Township Ghetto" solely for the purpose of preserving its voting strength. This can be regarded as no less than gerrymandering of the variety condemned by this Court. District lines simply cannot be drawn with a view to the characteristics of the citizens residing within those lines.

In *Reynolds v. Sims*, 377 U.S. 533, 583 (1964), this Court declared that decennial reapportionment was a rational and constitutionally acceptable principle. The constitutionality of the Indiana Apportionment Act of 1965 was submitted to the district court in the case of *Stout v. Bottorf*, 249 F. Supp. 488 (D.C. Ind. 1965). The district court specifically found that the Act met the requirements of this Court and was, hence, constitutionally sound. Thus, the district court in this cause, was barred from reconsidering the constitutionality of the Indiana Apportionment Act of 1965, and from reapportioning the state in 1969, before the 1970 census data became available and the state legislature had had an opportunity to reapportion the state on the basis of the 1970 census data. Minimum standards for stability in the law require such a decision.

The district court erroneously reapportioned districts for the state legislature on the basis of the obsolete 1960 census data. The time was the fall of 1969. That substantial changes and shifts in population since 1960 had rendered the 1960 census data unreliable was a well established fact. Therefore, a realistic, constitutionally-sound plan of reapportionment on the basis of the 1960 census data was impossible at that time. Furthermore, the 1970 census data would be available to the next regular session of the state legislature for the purpose of reapportioning the state. Moreover, action of the state legislature is the constitutionally preferrable means to reapportion districts for the state legislature.

The district court erroneously required single-member districts *throughout* the state. This was not a mere happenstance. It was a direct concomitant of the conclusion of the district court that a combination of multi-member districts with single-member districts was unconstitutional *per se*. In the alternative, the district court concluded that to be constitutionally accepted all districts within a state must be of uniform size. The district court applied Banzhaf's analysis to a highly speculative set of facts regarding Marion County and concluded that inequality of size among districts resulted in inequality of representation in the state legislature for the residents of those districts. According to Banzhaf, voters in a multi-member district had a greater weight because there were more candidates from which to choose and because they had more legislators representing them.

The district court's reapportionment plan created senate districts which crossed county lines contrary to the prohibition of Article 4, § 6, of the Indiana constitution and deprived twenty-five duly-elected Senators of the right to serve their full four-year term as required by Article 4, § 3, of the Indiana constitution. The state does not contend that the district court's violations of the Indiana constitution were error *per se*. However, the state submits that the decision of the district court in this regard should be reversed because the district court completely ignored the provisions of the Indiana Constitution without any justification whatsoever. The district court announced that pure mathematical equality was the result to be achieved, and the district court's plan approached pure mathematical equality. This Court has never required pure mathematical equality in devising districts for a state legislature. In reapportioning the state, the district court was bound to observe the requirements of the Indiana Constitution if at all possible, as the state legislature must. This, the state submits, the district court did not do. Further, the state submits that if the district court is to violate the provisions of the Indiana constitution, the violation must be justified. The district court did not adequately justify its violation of the Indiana Constitution.

ARGUMENT

I

THE DECISION OF THE DISTRICT COURT DECLARING THE MULTI-MEMBER DISTRICTING PROVISIONS OF THE INDIANA APPORTIONMENT ACT OF 1965, AS THEY RELATED TO MARION COUNTY, SHOULD BE REVERSED BECAUSE IT WAS THE RESULT OF A FAULTY ANALYSIS LEADING THE DISTRICT COURT TO THE ERRONEOUS CONCLUSION THAT THE SITUS OF THE RESIDENCE OF LEGISLATORS ELECTED FROM MARION COUNTY PREDETERMINED THEIR VOTING PATTERN.

The decision of the district court declaring unconstitutional the multi-member districting provisions of the Indiana Apportionment Act of 1965, as they related to Marion County, should be reversed. The decision of the district court was based on two factors. First of all, the district court found that the residents of the geographical area designated as the "Center Township Ghetto" have legislative interests significantly different from those of the residents of the remainder of the county. Secondly, the district court found that of the legislators elected from Marion County, disproportionately fewer legislators resided in the "Center Township Ghetto" than resided in Washington Township. Significantly, the district court did not find that the legislators elected from Marion County were not responsive to, ignored, or acted in ways contrary to the interests of the residents of the "Center Township Ghetto." At most, the factors relied upon by the district court in distinguishing the "Center Township Ghetto" are of dubious value.

The designation of the "Center Township Ghetto" as an identifiable entity has an unrealistic quality about it. Serious questions arise regarding the district court's analysis and its use of statistics in reaching its conclusions.

Though statistical analysis is not, generally, the legal professions strong suit, there are, nevertheless, certain general statistical principles of which cognizance may be taken. For instance, we know that the smaller the sample, the greater the probability of error. We know that the probability of error in the conclusions reached on the basis of any statistical analysis may be estimated. We know that sampling techniques and the extent of the sample affect the accuracy of the results obtained. And finally, we know that the results of any statistical analysis are merely conclusions based on inferences drawn from the raw data collected.

Turning to the opinion below, the state notes that the district court purported to conduct a statistical analysis of certain characteristics of the population of Marion County. That the district court was conducting a statistical analysis may be gathered from its opinion. (A. pp. 348-359). A reference to the footnotes to Tables 1, 2 and 3 shows that the information contained in those tables was extracted from exhibits introduced as evidence by the plaintiffs and defendants which were in fact previously compiled statistical analyses of Marion County. (A. pp. 351-353). The district court's Table 4, supposedly proving the existence of the "Center Township Ghetto," is merely a rearrangement of the information set out in Tables 1, 2 and 3. (A. pp. 354-355). And finally, when the district court referred to Table 4, it spoke of "statistical differences" which in its opinion proved the existence of the "Center Township Ghetto" (A. p. 358).

The district court's statistical analysis which was designed to prove the existence of the "Center Township Ghetto" was in fact based upon previously compiled statistical analyses. In any statistical analysis, a method of selection is chosen, usually random, and raw data is collected. After collection, the raw data are assembled and conclusions are drawn. The conclusions drawn are what appear as a statistical analysis. However, the conclusions drawn, and hence, the statistical analysis itself, are no more than inferences drawn from randomly collected raw data. Typically, based on the method of selection and the size of the sample for conducting the analysis, a standard estimate of error is computed to show the limits within which the probabilities are that the conclusions drawn represent reality.

In this case, exhibits of the state and the voters, representing previously compiled studies, were the starting point and hence the "raw data" upon which the district court based its inferences. The statistical studies used by the district court are set out in the footnotes to Tables 1, 2 and 3. (A. pp. 351-353). Based on these previous studies, the district court conducted a study of its own. The raw data for the district court's study were conclusions drawn in previous studies. The district court sample was small. The data were not randomly selected from the county. The voters had alleged in their complaint that a "ghetto" existed. Using that as a starting point the district court randomly selected census tracts from those alleged in the complaint as comprising a "ghetto." Thus, rather than selecting census tracks randomly from the county to discover whether there was an area within the county sufficiently differentiated from the rest of the county, the district court's starting point was that a "ghetto" did in fact exist. It reasoned from its own assumptions.

That the district court's method of selecting census tracts leaves much to be desired is illustrated in the court's opinion. Tracts 211 and 220 were specifically choosen for comparison purposes. Although, tract 563 was apparently selected at random, the sample from which it was selected appears to have been quite limited. Of the remaining seven census tracts selected, apparently at random, the sample from which they were selected was limited to an area designated in the complaint as a "ghetto." (A. pp. 349-350). Thus, the "ghetto" was presumed to exist.

The sample upon which the district court relied was small in relation to the area to be represented. There were one hundred and eighty-two (182) census tracts in Marion County. There are nine townships in Marion County. The district court's study was based on only ten census tracts from only two townships within Marion County. Of the ten census tracts studied, all or a part of the seven chosen were from an area predesignated as a "ghetto."

Table 4 was the table significant to a determination in this cause. (A. pp. 354-355). It was on the basis of Table 4, that the district court concluded that the "Center Township Ghetto" existed and that it was sufficiently distinguishable from the rest of the County to merit special consideration. However, an examination of Table 4 readily reveals that only eight, of a possible one hundred and eighty-two (182) census tracts were compared. Of the eight only one lay wholly outside what the court designated as the "Center Township Ghetto." That was census tract 220. A comparison of the characteristics chosen by the court to describe tract 220 with the characteristics of the "ghetto" tracts, the remaining seven, reveals that there is little to distinguish tract 220 from the "ghetto" tracts. All of the characteristics of tract 220 are within the range of the characteristics of the remaining seven "ghetto" tracts. (See Table 4, pp. 354-355).

In sum, the court's statistical study, used to show that the "Center Township Ghetto" was a reality, cannot be used to support its conclusions in this case. The sample was so small as to be meaningless. The method of selection was biased from the beginning. The district court's statistical analysis was not original, but rather, was based on previously compiled statistical studies. To the extent that any statistical study represents conclusions based on inferences drawn from raw data, the "Center Township Ghetto" is a statistical inference drawn from inferences drawn from a previous study. In other words, that the "Center Township Ghetto" exists is an inference based on inference. Therefore any decision based on it is a matter of speculation, and consequently in error.

The second basic factor supporting the district court's decision was a finding that disproportionately fewer legislators resided in the area designated as the "Center Township Ghetto" than resided in Washington Township. If the "Center Township Ghetto" is no more than a creation existing only in the imagination, having no basis in reality, then the case is at an end, and the decision of the district court must be reversed because there exists no segment of the population to be compared with the number of legislators per person residing in Washington Township or any other area selected within Marion County. However, assuming *arguendo,* that the "Center Township Ghetto" described by the district court's decision does in fact exist, it then becomes necessary to scrutinize the district court's finding that disproportionately fewer legislators resided in the "Center Township Ghetto" than resided in Washington Township.

The state submits that there is no basis in fact or in the evidence for comparing resident legislators per person of Washington Township to that of Center Township, the "Center Township Ghetto" or to any other geographical area in Marion County. The district court's sole basis for differentiating Washington Township from the "Ghetto" follows from the court's comparison of Tract 220, within Center Township, to the "Ghetto." (See Table 4, Critical Differentiating Characteristics, A. pp. 354-355 and the court's explanation, pp. 355-359). Comparing census tract

220 to census tract 507 within the "Ghetto" we see that there is little to differentiate census tract 220 from tract 507. If anything we might say that the residents of tract 507, a "Ghetto tract," are better off than the residents of tract 220 (Table 4, A. pp. 354-355). Thirty-Eighth Street is all that separates tract 220 from the Ghetto. Moreover, the voters in this case would have this Court believe that persons, having little or nothing to differentiate them, are over-represented on one side of the street but under-represented on the other. Furthermore, having differentiated tract 220 from the "Ghetto," the district court implicitly assumes that tract 220 is representative of the rest of Washington Township. There is absolutely nothing factually in the evidence to support that assumption.

Marion County is geographically divided into nine townships. There is absolutely no basis in fact or in the evidence in this cause for differentiating one township from another. Township lines are arbitrarily drawn and have no significance for the casting of votes in the state legislature. For instance, legislators residing within Washington Township could not, even if they so desired, obtain the enactment of legislation which would benefit solely the residents of Washington Township. Art. 4, § 22 of the Indiana Constitution provides that "[t]he General Assembly shall not pass local or special laws . . ." in certain designated instances including any law: 1) "regulating county and township business"; 2) "regulating the election of county and township officers and their compensation"; 3) "for the assessment and collection of taxes for State, county, township, or road purposes"; 4) "providing for supporting common schools and for the preservation of school funds"; or 5) "providing for opening and conducting elections of State, county or township officers, and designating the places of voting."

To insure the uniform operation of laws throughout the state, the Indiana Constitution also provides in Art. 4, § 23 that "[i]n all the cases enumerated in the preceeding Section [Art. 4, § 22, *supra*], and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State." Art. 4, §§ 22 and 23, have been interpreted consistently by the courts of this state to prohibit the enactment of legislation for the benefit of any single township within the state. Notwithstanding the prohibitions of the Indiana Constitution, there is still no basis in fact or in the evidence in this cause for concluding that the legislators who resided in Washington Township acted solely in the interest of those residing within Washington Township. Nor is there any basis for concluding that the legislators residing in Washington Township ignored the interests of the ghettoites. Significantly, voter Chavis, a Negro resident outside the "Ghetto," has served as a state senator from Marion County.

The controlling factor in this cause must be, assuming the Ghetto exists, how the interests of the residents of the "Ghetto" were treated in the state legislature. The most the district court could say of the interests of the Ghetto was that, apart from the interests of the Ghetto and county in common, statistical differences between tract 220 and the Ghetto represented compelling interests of the Ghetto ". . . in such legislative areas as urban renewal and rehabilitation, health care, employment training and opportunities, welfare and relief of the poor, law enforcement, quality of education, and anti-discrimination measures." (A. p. 358). The state submits that the compelling interests of the Ghetto, supposedly special interests of the Ghetto, are in reality county-wide interests. First of all, there is no basis in fact or in law for concluding that the compelling interests of the Ghetto are in fact interests solely of the Ghetto. Secondly, and more important there is no basis in fact or in law for concluding that the compelling interests of the Ghetto have been ignored in the state legislature. In point of fact, a disproportionally larger share of tax funds is actually spent in the "Ghetto" area for welfare, relief, urban renewal, etc. Nor is there any basis for concluding that, given another set of facts such as an election according to districts drawn by the district court in its order of December 15, 1969, the interest of the Ghetto would be served any differently.

As a matter of fact, the voters in this cause have at best done no more than show that they represent a special interest group. In the American system of government a special interest group is not represented by legislators, it is represented by lobbyists. The voters in this case are no more than lobbyists. Their remedy is not the judiciary. Their remedy is active lobbying in the state legislature as in the case of any other special interest group.

To carry the lobby analysis further, it is repugnant to our system of government to elect legislators by interest group. The interests of the people of the State of Indiana are myriad. Barbers, lawyers, doctors, educators, rich, middle class, poor, rural and urban dwellers, to name a few, all have special interests. Our system of government simply does not provide for the election of legislators by special interest group. The interest of the Ghetto, if the Ghetto exists apart from the rest of the county and indeed the state, are simply not interests solely of those persons living within the geographical boundaries of what has been designated in this cause as a Ghetto. These are interests of persons, voters, scattered throughout the county and further, throughout the state. Under our system of government, legislators are chosen from geographical areas set off by lines which we call districts. The voters of any given legislative district might for instance have interests representative of interests throughout the state. Persons living within a legislative district, having a special interest, must confront the legislators elected from their district with their demands. The power of the persons having a special interest when confronting their legislator is always the same whether those persons are rich or poor, doctor or mechanic, white or black. That power is, "I am a voter and I demand your attention." "If I do not get your attention, you will no longer have my vote!" "What's more, I may actively campaign against you in the next campaign." The power of the Ghettoites is no different. The district court found that 132,000 persons lived in the "Center Township Ghetto" out of 698,000 for all of Marion County, according to the 1960 census. The legislators elected at-large from Marion County are not elected by their friends or neighbors or even the voters residing within the same township in which they reside. They are elected by *all* of the people of Marion County. Not one legislator elected from Marion County can afford to ignore the wishes of 132,000 people. No legislator elected from Marion County can afford to ignore the hopes, dreams, wishes and desires of almost 20% of the electorate, nor does the evidence show they have. The decision of the district court must be reversed. To hold otherwise, would significantly affect our system of government.

The district court found to exist what it has referred to as a legally cognizable racial minority group, that is to say, Negroes residing in the "Center Township Ghetto" as defined by the district court. The State has already argued that the Negroes residing in what the court referred to as the "Center Township Ghetto" constitute a special interest group. Certainly Negroes having interests similar to those living within the Center Township Ghetto live within Marion County outside the Ghetto area. Voter Chavis, a resident of Washington Township, is one. Certainly, similarly situated Negroes reside in other areas within the state.

Voter Walker, a resident of Lake County, is one. As Negroes having a special interest they do not differ from any other cross segment of the population of the state having special interests. As this court has said in *Reynolds v. Sims,* 377 U.S. 533, 560 (1964), ". . . the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State. . . ."

> "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests." *Reynolds, supra,* at p. 562.

Only last Term, this Court in *Kirkpatrick v. Priesler,* 394 U.S. 526, 533 (1969), rejected, as a justification for variances from the principle of one-man one-vote, the need ". . . to avoid fragmenting areas with distinct economic and social interests and thereby diluting the effective representation of those interests in Congress. . . ." Quoting from *Reynolds, supra,* this Court, in *Kirkpatrick, supra,* held:

> ". . . to accept population variances, large or small, in order to create districts with specific interest orientations is antithetical to the basic premises of the constitutional command to provide equal representation for equal numbers of people. Neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests cast votes." at p. 533.

Turning to multi-member districting laws, they were in effect in some 18 state senates and 38 state houses of representatives in 1965. In *Reynolds, supra,* this Court expressly recognized that multi-member districts are constitutionally permissible when in accord with "the overriding objective" of "substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen of the state." 377 U.S., at pp. 578-579. In later cases, this Court rejected broad constitutional attacks on multi-member districts stating that, where the requirements of *Reynolds, supra,* are met, multi-member districts will constitute an invidious discrimination "only if it can be shown that designedly or otherwise a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Burns v. Richardson,* 384 U.S. 73, 88 (1966), quoting *Fortson v. Dorsey,* 379 U.S. 433, 439 (1965). In fact, however, this Court has never invalidated a multi-member districting system. Indeed in three other cases, this Court has affirmed without opinion district court decisions upholding multi-member districts. *Crawford County Bar Association v. Faubus,* 383 U.S. 271 (1966), affirming *Yancy v. Faubus,* 251 F.Supp. 948 (E.D. Ark. 1966); *Harrison v. Schaeffer,* 383 U.S. 269 (1966), affirming, *Schaeffer v. Thompson,* 251 F.Supp. 450 (D. Wyo. 1965), *Burnette v. Davis,* 382 U.S. 42 (1965), affirming, *Mann v. Davis,* 245 F.Supp. 241 (E.D. Va. 1965).

There would appear to be nothing in any decision of this Court which would justify the district court's decision in this case. In fact the district court's reliance on such political considerations as the control of political parties in the county chairman over the selection of legislators and their vote in the state legislature would seem to be contrary to this Court's prohibition, in *Baker v. Carr,* 369 U.S. 186, 217 (1962), against judicial incursion into "political questions." See also, Mr. Justice Harlan, dissenting in *Reynolds, supra,* where he said that no judicially manageable standard can determine whether a state should have single member districts or multi member districts or some combination of both.

The district court's decision finding the Marion County multi member district unconstitutional was based on its finding that a cognizable racial minority group, Negroes living in the "Center Township Ghetto" of Marion County, had not received their proportional share of legislators living in that area. However, this Court's decisions concerning multi member districting have spoken only of minimization or cancellation of the voting strength of "racial or political elements" of the voting population, *Burns, supra,* 384 U.S., at p. 88, and not of the voting strength of "racial, socio, economic" groups or other identifiable interests. More fundamentally, this Court has never adopted the extremist theory that a special interest group has a constitutional right to proportional representation in government. For instance, this Court refused to allow population variances in order to create districts with specific interest orientations in *Kirkpatrick, supra,* 394 U.S., at p. 533; *Wells v. Rockefeller,* 394 U.S. 542, 546 (1969); *Reynolds, supra,* 377 U.S., at pp. 561-562. Compare, *Hoyt v. Florida,* 386 U.S. 57, 69 (1967), where this Court said that "[i]n the administration of the jury laws proportionate class representation is not a constitutionally required factor." Compare also, *Clay v. United States,* 397 F.2d 901, 912 (5th Cir. 1968), rehearing denied *en banc,* vacated and remanded on other grounds *sub nom. Giordano v. United States,* 394 U.S. 310 (1969), where it was held that nothing in the Constitution or the Universal Military Training and Selective Service Act requires racially proportioned Selective Service Boards. Indeed, in light of the myriad possible special interest group combinations, adoption of such a theory would be catastrophic for government at all levels. *See also Madison, Federalist Paper No. 10.*

The district court relied, in part, on the suggestion in *Burns, supra,* 384 U.S., at p. 88, that the invidious effect of multi member districts could be more easily shown if, (1) districts were large in relation to the total number of legislators, (2) districts were not so subdivided as to assure distribution of legislators over the entire district and (3) the districts characterized both houses of a bi-cameral legislature. However, such considerations are plainly only factors in the overall determination of whether the voting strength of a racial or political group has been designedly minimized, or totally and substantially submerged. The state thinks it clear that such a characterization of the Marion County multi-member district cannot be made without an additional finding that the Marion County multi-member district had been adopted as a means of frustrating minority rights or, in point of unlikely fact, that the Marion County legislators had ignored or failed properly to represent the needs and interests of the subject racial or political group. It is highly significant that in the instant case no such findings were made.

In summary, the state submits that the district court's invalidation of the Marion County multi-member district was based upon a constitutionally impermissible analysis of abstract political considerations and on stringent and unprecedented requirement of proportional representation of one of many possible special interest group combinations. To adopt the district court's reasoning would jeopardize not only multi-member districts prevailing in a substantial number of states but a multiplicity of another political institutions. For instance, the reasoning of the district court might be applied to invalidate a single member districting scheme which had a relatively low number of legislators on the theory that one legislator could not effectively represent the many interests of a large constituency.

II

THE DECISION OF THE DISTRICT COURT REAPPORTIONING THE STATE OF INDIANA SHOULD BE REVERSED BECAUSE IT DESIGNEDLY PROTECTS THE GEOGRAPHICAL AND POLITICAL SOLIDARITY OF A COGNIZABLE RACIAL MINORITY GROUP FOUND TO RESIDE WITHIN THE CENTER TOWNSHIP GHETTO AREA FOR THE SOLE PURPOSE OF PRESERVING ITS POLITICAL VOTING STRENGTH.

The districting plan adopted by the district court in its order of December 15, 1969, is unconstitutional to the extent to which it was expressly designed to protect the geographical and political solidarity of a cognizable racial minority group found to reside within the "Center Township Ghetto" by separately districting the Ghetto for the purpose of preserving its political voting strength. Having concluded in its order of July 28, 1969, that the Marion County multi-member districting provisions of the Indiana Apportionment Act of 1965 were unconstitutional in that they operated to minimize and cancel out the voting strength of the residents of the "Center Township Ghetto," the district court devised districts for the house and the senate approximating the "Center Township Ghetto." Turning to the district court's opinion in its order of December 15, 1969, the state notes that on the one hand the district court rejected a plan of the intervening defendants below because large suburban areas were combined with parts of the "Center Township Ghetto," contrary to the teachings of *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), condemning gerrymandering. The state, also sees gerrymandering as devising districts with a view to the characteristics of those living within a proposed district. (A. pp. 394-395).

On the other hand the districting plan adopted by the lower court was expressly chosen because it protected

"... the legally cognizable racial minority group [residents of the ghetto] against dilution of its voting strength ...," for both the house and the senate of the state legislature. (A. p. 395). And again, the district court said:

> "In establishing district lines for the metropolitan areas of the state, the Court has taken judicial notice of the *1960* census statistics as to the location of the non-white population. The single-member district plan gives recognition to the cognizable racial minority group whose grievance led to this litigation." (A. p. 397).

In *Gomillion, supra,* the Alabama State Legislature passed an enactment redefining the boundaries of the City of Tuskegee so that Negroes who were residents and voters in city elections prior to the legislative enactment in issue were outside the redefined City of Tuskegee. This Court declared the Alabama Legislative Enactment unconstitutional because it singled out "... a readily isolated segment of a racial minority group for special discriminatory treatment. ..." 364 U.S. at p. 346. Although the factual situation in *Gomillion, supra,* differs superficially from the factual situation in this cause, the state submits that the principles to be applied are the same. In *Gomillion,* former residents of the City of Tuskegee were gerrymandered out of the city thereby depriving former residents of the city of the right to vote in city elections. The city district lines were specifically drawn to exclude former voters from the city solely because they were Negroes. In this cause, the Negro voters of the Ghetto have not been districted out of their vote. Rather, quite the opposite is true, the district lines have been drawn around the Ghetto specifically with a view to maintaining the geographical political solidarity of the voters within the Ghetto. The state submits, that under the principles enunciated in *Gomillion,* if district lines should not be drawn specifically with a view to excluding Negro

voters, then, district lines should not be drawn with a view specifically to confine Negro voters to a Ghetto.

The ramifications of affirming this aspect of the district court's order of December 15, 1969 are of great consequence. Should this Court affirm this aspect of the district court's decision, the reapportionment battles of the decade of the 70's will be directed quite likely toward the actual physical drawing of the district lines as well as population per district. The negro voters of the Ghetto are a special interest group entitled to no additional consideration. This Court has never held, nor should it hold, that the interests of *any* group are so unique or so special that they are entitled to be separately districted or confined.

III

THE DECISION IN THE CASE OF *STOUT V. BOTTORF*, 249 F.Supp. 488 (D.C. Ind. 1965), UPHOLDING THE CONSTITUTIONALITY OF THE INDIANA APPORTIONMENT ACT OF 1965, SERVED TO BAR THE DISTRICT COURT FROM DECLARING UNCONSTITUTIONAL THE MULTI-MEMBER DISTRICTING PROVISIONS OF THE SAME ACT, AS THEY RELATED TO MARION COUNTY, AND SERVED TO BAR THE DISTRICT COURT FROM ACTUALLY REAPPORTIONING THE STATE OF INDIANA, IN VIEW OF THIS COURT'S DECISION IN *REYNOLDS V. SIMS*, 377 U.S. 533, 583 (1964), LIMITING THE NECESSITY TO REAPPORTION CONSTITUTIONALLY TO ONCE BETWEEN EACH DECENNIAL CENSUS.

The history of Indiana's attempt to reapportion districts for the state legislature constitutionally began with the districts court's decision in *Stout v. Hendricks*, 228 F.Supp. 568 (D.C. Ind. 1963), declaring unconstitutional a 1921 act apportioning districts for the state legislature. The district court enjoined the state from conducting any further elections for the state legislature under the 1921 Acts, but postponed the effect of the injunction until after the 1964 elections.

During the 1963 regular session of the state legislature a new apportionment act was passed, but was vetoed by the governor. The legislature failed to override the governor's veto. Subsequently, the Indiana Supreme Court effectively set aside the veto, and the 1964 elections were conducted under the 1963 Act.

The 1965 regular session of the state legislature again enacted legislation reapportioning the state. However, the district court found these acts to be constitutionally infirm in *Stout v. Bottorff*, 246 F.Supp. 825 (D.C. Ind. 1965).

In response to the district court's decision in the first *Stout* case, *supra*, a second special session of the state legislature was convened on October 18, 1965. In its second special session of that year, the state legislature enacted four acts apportioning the senate and four acts apportioning the house of representatives. The acts were submitted to the district court as plans to be considered in the alternative. These alternative acts were considered by the district court in what may be regarded as the second *Stout* case. See, *Stout v. Bottorff*, 249 F.Supp. 488 (D.C. Ind. 1965). Of the plans submitted, the district court selected what were referred to in its opinion as Senate Plan B and House Plan C as meeting constitutional standards. Senate Plan B and House Plan C were the Indiana Apportionment Act of 1965 which is the subject of litigation in this cause.

In the second *Stout* case, *supra*, the district court specifically found that the Indiana apportionment act of 1965 ". . . provided substantially equal state legislative representation for all voters in Indiana regardless of where they reside[d]. . . ." The district court went on to declare that the Indiana Apportionment Act of 1965 had met the federal requirements of *Reynolds v. Sims,* 249 F. Supp., at p. 493.

Notwithstanding the district court's decision in the second *Stout* case, *supra,* the district court in this cause declared the multi-member districting provisions of the Indiana Apportionment Act of 1965 as they related to Marion County unconstitutional in its order of July 28, 1969, and imposed its own districting plan on the state in its order of December 15, 1969. In so doing, the district court ignored the holdings of this Court in *Reynolds v. Sims, supra.* In *Reynolds v. Sims, supra,* at p. 583, this Court said that ". . . [d]ecennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth." Furthermore, this Court did not regard the ". . . Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. . . ." At p. 583. In this Court's opinion, at that time, decennial reapportionment would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation. ". . . All limitations on the frequency of reapportionment are justified by the need for stability in continuity in the organization of the legislative system. . . ." At p. 583. Compare *Nixon et al. v. Brewer et al.,* — F.Supp. — (D.C. N.D. Ala. 1970) (Cause No. 3017-N, decided March 4, 1970); and *Cahoon et al. v. Maddox et al.,* — F.Supp. — (D.C. Atl. D. Ga. 1969) (Cause No. 13011, decided December 9, 1969), refusing to reapportion in light of this aspect of *Reynolds, supra,* on similar facts.

The state met the minimal requirements of this Court with the enactment of the Indiana Apportionment Act of 1965 and its approval as meeting constitutional standards in the second *Stout* case, *supra.* Consequently, the district court's acts in declaring unconstitutional the Indiana Apportionment Act of 1965 and in imposing a districting plan on the state were clearly without authority and must be reversed.

IV

THE DISTRICT COURT'S ORDER APPORTIONING DISTRICTS FOR THE STATE LEGISLATURE ON THE BASIS OF THE 1960 CENSUS DATA SHOULD BE REVERSED BECAUSE SUBSTANTIAL CHANGES AND SHIFTS IN POPULATION SINCE 1960 RENDERED THE 1960 CENSUS DATA OBSOLETE AND UNRELIABLE, AND BECAUSE THE 1970 CENSUS DATA WOULD BE AVAILABLE TO THE NEXT REGULAR SESSION OF THE STATE LEGISLATURE FOR THE PURPOSE OF REAPPORTIONING THE STATE.

On October 24, 1969 the district court announced that 1960 census data would be used as a basis for redistricting the state. (A. p. 392). The districting plan eventually adopted by the district court and imposed upon the state for the purpose of conducting the 1970 election for the state legislature was in fact based on the 1960 census data. (A. p. 396). In answer to objections that the 1960 census data were so outdated as not to be reliable, the district court declared that the 1960 census data would simply have to be tolerated. (A. p. 394). The district court's plan was promulgated on December 15, 1969, less than a month before census takers would begin compiling the 1970 census. In so doing, the district court committed reversible error.

First of all, the district court's plan, promulgated in its own order of December 15, 1969, created grossly impermissible and unconstitutional variances among the districts as tested by available 1969 census data. As the state illustrated in its Emergency Application for a Stay of the district court's order which was granted by this court on February 2, 1970, 90 S. Ct. 748 (1970), measurable inequality far exceeding the inequalities found by the district court in its opinion on July 28, 1969, were fostered, Applying estimates of the Metropolitan Planning Commission of Marion County as of June 30, 1969, compiled by census tract for Marion County, to the district court's plan of December 15, 1969, it became obvious that all of Center Township was grossly *over*-represented. The four districts approximating the so-called Center Township Ghetto, were 17% over-represented, on the average. While the population of Marion County was growing as a whole, all of Center Township, including the Ghetto area, had experienced a decrease in population. On the other hand, three Marion County districts outside of Center Township comprising suburban areas of Marion County were grossly *under*-represented to the extent of 36%, 45%, and 50%.

Apart from the results actually obtained by the use of the 1960 census data, on the eve of the 1970 general elections, other federal courts passing on the question have uniformly refused to require reapportionment in 1969 because of the obsolecence of the 1960 census data. *Skolnick v. Mayor*, 415 F.2d 1291 (7th Cir. 1969) (decided August 8, 1969); *Skolnick et al. v. State Electoral Board*, 307 F.Supp. 691 (D.C.E.D. Ill. 1969); *Cahoon et al. v. Maddox et al.*, — F.Supp. — (D.C. Atl. D. Ga. 1969) (cause no 13011, decided December 9, 1969); see also, *Nixon et al. v. Brewer et al.*, — F.Supp. — (D.C. N.D. Ala. 1970) (Cause No. 3017-N, decided March 4, 1940).

Although the City of Chicago was malapportioned for the purpose of conducting an election for the city council, the court in *Skolnick v. Mayor et al., supra*, refused to require reapportionment on the basis of the 1960 census data because:

> "It is certain that a reapportionment based on the 1960 census figures cannot be used for present reapportionment of the wards. All would agree they are not reliable because of obvious and substantial population changes and shifts since 1960. No relevant supplemental data has been shown to be available. . . . " 415 F.2d at page 1298.

Interestingly enough, the court distinguished the case of *Chavis v. Whitcomb,* 305 F.Supp. 1364 (D.C. Ind. 1969), the subject of this litigation. Apparently the 7th Circuit Court of Appeals inferred, from the district court's decision in *Chavis,* that the 1967 estimates upon which the district court in *Chavis* relied so strongly would be used to reapportion the state. This inference failed to materialize when the district court reapportioned the State of Indiana on the basis of the *1960* census data. Thus the decision of the district court, in this cause, to reapportion on the basis of the 1960 census data directly conflicts with the decision of the 7th Circuit Court of Appeals, that a constitutionally valid plan of reapportionment cannot now be devised on the basis of the 1960 census figures.

Although concluding that the Illinois State Legislature was unconstitutionally apportioned, a district court for the Northern District of Illinois, in *Skolnick v. State Electoral Board, supra,* refused to require reapportionment on the basis of the 1960 census figures on the eve of the 1970 General Elections. The district court relied heavily upon the decision of the 7th Circuit Court of Appeals in *Skolnick v. Mayor, supra.* The court had little faith in the efficacy of the 1960 census figures:

> "Here we turn to the fact that since 1960 there have been substantial changes in the distribution of population throughout Illinois (See 'Population

> Estimates and Projections', U.S. Department of Commerce, Series p-25, No. 427, 7-31-69). Of course if exact equality per 1960 figures had been achieved early in the decade such districting would still be in force and be constitutionally valid for the 1970 election notwithstanding these shifts in population. Reynolds v. Sims, p. 583. But to put such a districting in force after the shifts have been known to occur, for only the last election in the decade, and in order to achieve, at best only minor corrections seems to have little weight in its favor." 307 F.Supp., at pp. 694, 695.

The court concluded that the 1960 census figures no longer portrayed the present population scheme. Hence the court concluded:

> ". . . [W]e deem it impractical to draw new maps for the 1970 election, creating districts of equal population according to 1960 figures or to order any special census, or an at-large election. Thus we, a Court of Equity, are presented with the only equitable alternative, to wit, election in 1970 of both Houses under the present (1965) maps. With respect to those maps we find that under the circumstances, 'the best that can be had within the framework of the Constitutional provision applicable until 1970. . .' *Jackman v. Bodine*, 53 N.J. 585, 252 A.2d 209, 211 (1969); cert. denied, 396 U.S. 822 . . . Oct. 13, 1969." 307 F.Supp., at p. 697.

Again, although congressional districts for the State of Georgia were unconstitutionally apportioned, a district court for the Northern District of Georgia, in *Cahoon et al v. Maddox et al., supra,* refused to require reapportionment on the basis of the 1960 census figures on the eve of the 1970 elections. In accordance with this Court's decision in *Westberry v. Sanders,* 376 U.S. 1 (1964), finding the Georgia statute apportioning congressional districts unconstitutional, the General Assembly of Georgia constitutionally reapportioned, with the approval of the district court in 1964. However, since this Court had narrowed the allowable variances among districts in *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), and *Wells v. Rockefeller*, 394 U.S. 542 (1969), the Georgia reapportionment statute, constitutional in 1964, was no longer constitutional. Nevertheless, the district court refused to require reapportionment now. First of all, the district court refused to require reapportionment because the state had constitutionally reapportioned in 1964:

> "In Reynolds v. Sims, 1964, 377 U.S. 522, 84 S. Ct. 1362, 12 L. Ed. 2d 506, the court held that one reapportionment between each decennial census meets the constitutional requirement. 377 U.S. at 583-584. This was a practical answer in the interest of stability in government to the fact of constant shifts in population."

But also, the court refused to require reapportionment on the basis of the 1960 census figures because of substantial shifts in the population since 1960:

> "The problem is compounded by current population estimates which reflect substantial population shifts in the state since 1960. Population estimates prepared by the Georgia Department of Health indicate spectacular growth in the Fourth, Sixth, and Seventh small districts and substantial lack of growth in the First, Second, Third, Eighth and Ninth districts. Only the Fifth and Tenth districts are having average growth. These estimates raise the spector of massive shifts of counties and even parts of counties to accomplish constitutional apportionment and we conclude that a piecemeal approach, using estimated populations, so near the 1970 census is not warranted."

With the exception of this district court, the federal courts have consistently refused to require reapportionment on the eve of the 1970 general election on the basis of the 1960 census figures, because they are obsolete and unreliable. It is noteworthy in this regard that the district court's plan was not announced until December 15, 1969, a mere sixteen days before the first day of the year 1970, when the 1970 census would begin. Thus the district court's decision to redistrict the state on the basis of the 1960 census should be reversed.

V

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR WHEN IT REQUIRED SINGLE MEMBER DISTRICTS THROUGHOUT THE STATE BECAUSE THERE WAS A CLEAR STATE PREFERENCE FOR SOME MULTI-MEMBER DISTRICTS AND BECAUSE THERE WAS AN ABSOLUTE ABSENCE OF EVIDENCE TO SHOW THAT THE MULTI-MEMBER DISTRICTS IN THE STATE OTHER THAN MARION COUNTY WERE IN ANY WAY CONSTITUTIONALLY INFIRM.

The district court erred, as a matter of law, when, in view of the facts of this cause it adopted a single-member districting plan. To understand how the district court erred in this regard, it is necessary to place the district court plan in the proper context.

Under the Indiana Apportionment Act of 1965, there are eight multi-member districts for the Senate and twenty-five for the House. The complaint in this cause challenged only the Marion County multi-member districts. The district court in this cause did not declare all of the Indiana Apportionment Act of 1965 unconstitutional. The district court entered no judgment regarding the constitutionality of the remaining seven multi-member districts for the Senate nor the remaining twenty-four for the House. Nevertheless, the district court effectively abolished all multi-member districts in Indiana.

At the trial of this cause, John Banzhaf, an associate professor of law at George Washington University, testified as an expert witness. Banzhaf characterized himself as an expert on the effect of multi-member districts as a tool of the electoral system. Banzhaf testified to the inequality given to the weight of a voter in a multi-member district versus a single-member district, based on a theoretical mathematical analysis devised by himself. According to Banzhaf's analysis, a voter in a multi-member district casts more critical votes than a voter in a single-member district because a voter in a multi-member district has more candidates from which to choose. Furthermore, he testified, if the legislators from a multi-member district vote as a bloc, each legislator's vote has a greater weight than that of a legislator from a single-member district. Significantly, all Banzhaf could say regarding the Marion County multi-member district was that if Marion County had a multi-member district then votes of Marion County residents had a greater weight than did votes of the residents of single-member districts within Indiana. (A. pp. 139-155).

Adopting Banzhaf's analysis as representing reality, the district court applied the analysis to districts within Indiana and found that Marion County voters had a greater voice in the legislature than comparable voters in a single-member district within the state. (A. pp. 377-379).

Implicit in the decision of the district court was a finding that a scheme of reapportionment combining districts electing different numbers of legislators was inherently unequal and hence unconstitutional. For instance, the district court said:

> ". . . We note that if all districts were equal in size and elected equal numbers of legislators, then all constituents of each district would have the same voice in the legislature. . . ." (A. p. 378).

The district court went on to say that:

> "The use of uniform districts is one method of curing defects and unequal representation, . . . [thereby eliminating] ". . . problems of critical vote inequality, unequal black representation and unequal members of voices in the legislature per person. While application of the uniform district principle would require all districts to be equal in population and elect equal members of legislators from each uniform district, it does not require single-member districts. . . ." (A. p. 379).

Against this background the district court did in fact adopt a single-member districting plan in it's order of December 15, 1969.

The district court in its opinion of July 28, 1969, made it quite clear that it was requiring districts of uniform size. This requirement of the district court is absolutely without authority. This Court has required no such thing in any of its reported decisions. On the contrary, this Court has explicitly approved districting schemes which provided for districts of unequal size.

In reality the district court's requirement that the districts be of uniform size is but a veiled attack on all the multi-member districts for the House and Senate in Indiana. The district court's sole basis for abolishing multi-member districts in Indiana was the theoretical mathematical analysis of John Banzhaf who testified in this cause.

In fact, the effect of the district court's decision is to find any reapportionment scheme providing for a mixture of multi-member districts with single-member districts, unconstitutional *per se*. This is directly contrary to the holdings of this Court in *Fortson v. Dorsey*, 379 U.S. 433 (1965). In *Fortson*, this Court was faced with a challenge to a reapportionment scheme combining multi-member districts with single-member districts. This Court reversed the decision of the district court in that case holding that "... the multi-member constituency feature of the Georgia scheme was *per se* bad. 379 U.S., at p. 483.

Furthermore, this court in *Fortson, supra,* quoting from *Reynolds, supra,* said:

> "Only last Term, in our opinion in *Reynolds v. Simms,* 377 U.S. 533, decided after the decision below (referring to the Fortson decision), we rejected the notion that equal protection necessarily requires the formation of single-member districts." 379 U.S. at p. 436.

Thus, to the extent to which the district court impliedly found Indiana's apportionment scheme unconstitutional for mixing multi-member districts with single-member districts, and to the extent that it required all single-member districts, its decision should be reversed.

VI

THE COURT ORDERED DISTRICTING PLAN SHOULD BE REVERSED BECAUSE IT CREATED SENATE DISTRICTS WHICH CROSSED COUNTY LINES CONTRARY TO THE PROHIBITION OF ARTICLE 4, SECTION 6, OF THE INDIANA CONSTITUTION AND BECAUSE THE DISTRICTING PLAN DEVISED BY THE COURT OPERATED TO DEPRIVE 25 DULY ELECTED SENATORS OF THE RIGHT TO SERVE THEIR FULL TERM AS REQUIRED BY ARTICLE 4, SECTION 3, OF THE INDIANA CONSTITUTION, AND THUS ALSO VIOLATED THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The district court's plan, adopted in its order of December 15, 1969, provides for districts which cross county lines and serves to effectively deprive 25 holdover senators of the right to serve out the balance of their four-year terms.

Article 4, § 3 of the Indiana Constitution regarding terms of office provides that:

> "Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: Provided, however, that the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class, at the expiration of four years; so that one-half as nearly as possible, shall be chosen bienially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable."

As to crossing county lines, Article 4, § 6 of the Indiana Constitution provides that:

> "A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county for Senatorial apportionment, shall ever be divided."

On October 24, 1969, the district court announced that ". . . that county and township boundary lines would be crossed in drawing district lines wherever necessary to achieve equality of population in the districts but that the Court would strive to preserve the integrity of county and township lines." (A. p. 392). As to the holdover senators, the district court declared that the senators elected for four-year terms but who had only served a two-year term did not have a vested right to serve out the balance of their four-year term. (A. pp. 397-398).

While being mindful of this Court's declaration in *Reynolds v. Sims*, 377 U.S., at p. 584 that ". . . [w]hen there is an unavoidable conflict between the Federal and the State Constitution, the Supremacy Clause of course controlled," and subsequent decisions of this Court applying the principle, the state nevertheless submits that the district court erred when it devised districts which crossed county lines and deprived all holdover senators of their second-year term in this cause. The district court's sole justification for violating the dictates of the Indiana Constitution was that it was necessary to do so in order to achieve mathematical equality among districts. (A. p. 395). The district court did in fact obtain near mathematical equality, the deviations among districts in both houses were kept within a ± 1%. The state submits that the district court's error was in running roughshod over provisions of the Indiana Constitution in order to achieve pure mathematical equality when this Court does not require pure mathematical equality when apportioning for a state legislature.

In *Reynolds, supra*, at p. 577-581, this Court declared that mathematical exactness or precision is hardly a workable constitutional requirement in the area of state legislative apportionment and that legitimate state considerations might justify some deviations from a one man-one vote principle. See also *Swann v. Adams*, 385 U.S. 440 (1967). In *Kirkpatrick, supra*, and *Wells, supra*, this court apparently narrowed the range of deviations from a pure population standard which it would allow in any scheme for apportioning congressional districts in the absence of some rational justification. In this cause, the district court applied *Kirkpatrick, supra*, and *Wells, supra*, as requiring mathematical exactness in reapportioning districts for Indiana's State Legislature. The State submits that in so doing, the district court unjustifiably violated the Indiana Constitution.

In *Reynolds, supra,* at p. 578, this Court expressly recognized that distinctions might well be made between Congressional and State legislative districting and asserted more flexibility might be constitutionally permissible in districting for state legislature than in districting for congressional districts. This case represents the reverse of the situation where the State comes before this court with an apportionment scheme in which there are substantial deviations among districts. The error in this case is not the *per se* violation of the Indiana Constitution. Rather, the error is in providing for pure mathematical equality without having meaningfully considered the possibilities of a districting scheme which did not violate the Indiana Constitution, a legitimate state concern. Having assumed the responsibility for reapportioning the Indiana State legislative districts, it was incumbent upon the district court to make every effort to devise an apportionment scheme which did not violate the Indiana Constitution. This the district court did not do. Having violated the Indiana Constitution in devising districts for the state legislature, it was incumbent upon the district court to justify the violation of the Indiana Constitutional provisions involved. This the district court did not do. The Fourteenth Amendment to the Constitution of the United States must serve to limit the acts of the district court to the same extent to which it limits acts of the state legislature in the reapportionment area. Compare, *Kirkpatrick v. Preisler, supra* (failure of state to justify deviations). Consequently, the state submits that the decision of the district court should be reversed because it violated the Indiana Constitution without adequate justification.

CONCLUSION

For these reasons, it is respectfully submitted that the order of the district court should be reversed.

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Supreme Court,
FILED
APR 29 1970
JOHN F. DAVIS, CLER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~1198~~ 92

EDGAR D. WHITCOMB, GOVERNOR
APPELLANT
v.
PATRICK CHAVIS, ET AL.

On Appeal from the United States District Court for the Southern District of Indiana

BRIEF OF THE STATE OF ILLINOIS JOINED BY THE STATES OF ALABAMA, ALASKA, ARIZONA, COLORADO, IOWA, MISSISSIPPI, MONTANA, SOUTH DAKOTA, TEXAS, UTAH AND WEST VIRGINIA, AS *AMICI CURIAE*

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IN THE

Supreme Court of the United States

October Term, 1969

No. 1198

Edgar D. Whitcomb, Governor
Appellant
v.
Patrick Chavis, Et Al.

On Appeal from the United States District Court for the Southern District of Indiana

BRIEF OF THE STATE OF ILLINOIS JOINED BY THE STATES OF ALABAMA, ALASKA, ARIZONA, COLORADO, IOWA, MISSISSIPPI, MONTANA, SOUTH DAKOTA, TEXAS, UTAH AND WEST VIRGINIA, AS *AMICI CURIAE*

OPINIONS BELOW

The July 28, 1969, opinion of the district court is reported at 305 F. Supp. 1364. The December 15, 1969, opinion of the district court is reported at 307 F. Supp. 1362.

JURISDICTION

On July 28, 1969, the three-judge district court issued an order and opinion declaring unconstitutional the multi-member districting provisions of the legislative apportionment statutes of Indiana relating to Marion County. On December 15, the district court issued an order expressly enjoining the state election officials from conducting any elections under the apportionment acts declared unconstitutional and mandating the state election officials to conduct the 1970 elections in accordance with a plan drawn by the Court. On February 18, 1970, the State docketed its appeal with this Court, and on March 23, 1970, probable jurisdiction was noted. This Court's jurisdiction rests on 28 U.S.C. 1253.

QUESTIONS PRESENTED

The amicus curiae will discuss the following questions.

1. Does a multi-member districting scheme contravene the equal protection clause merely on the grounds that a cognizable racial-socio-economic group has not, as the lower court found, elected a proportionate share of representatives?

2. In the absence of a demonstrated invidious discrimination, is the multi-member district versus the single-member district problem a non-justiciable political question?

3. Does the equal protection clause require, or does it even permit, legislative district lines to be drawn to protect cognizable racial-socio-economic groups against dilution of their voting strength?

INTEREST OF THE AMICUS CURIAE

This Brief Amicus Curiae, presented for the State of Illinois, is sponsored by William J. Scott, its Attorney

General, and joined by other states having an interest in the outcome of this case.

Illinois, a populous state, has a large state legislature composed of representatives elected from a combination of single-member and multi-member districts. A recent study indicates that Illinois and Indiana are a part of a group of some thirty-eight states which make some use of multi-member districts in electing representatives to their respective state legislatures—thirty-eight houses of representatives and eighteen state senates. Furthermore, at-large districts are commonly used at the local governmental level in most states.

The interest of Illinois, and other similarly situated states, is immediate and direct. This Court's decision will directly affect the constitutionality of state and local districting plans in force in Illinois, as in similarly situated states. For recent reapportionment litigation affecting the State of Illinois, see *Skolnick* v. *State Electoral Board*, 307 F. Supp. 691 (N.D. Ill. 1969), state legislative redistricting; *Skolnick* v. *State Electoral Board*, 307 F. Supp. 698 (N.D. Ill. 1969), congressional redistricting.

STATEMENT

This is action for declaratory and injunctive relief brought by Negro residents of Marion County, Indiana, alleging that the multi-member districting scheme for electing that county's representatives to the state legislature violates the equal protection clause of the federal Constitution. Several other plaintiffs joined in the suit representing such groups as Negroes in Lake County, Indiana, and Republican suburbanites in Marion County. Relief was denied these latter groups on various grounds, generally because of failure of proof of their claims or lack of standing.

On July 28, 1969, the Three-Judge District Court filed an opinion and order declaring the multi-member scheme of Marion County unconstitutional and giving the State until October 1, 1969, to redistrict and reapportion the State consistent with the district court's Opinion. On December 15, 1969, the Court, noting the failure of the state legislature to reapportion itself as ordered by the Court, itself reapportioned the Indiana legislature.

In its July 28 Opinion the District Court noted that Marion County residents had been allocated 15 of 100 state representative seats and 8 of 50 state senate seats, the largest number of seats held by any county in Indiana. The Court also noted that there was no subdistricting within the multi-member district and that all candidates ran on an at-large basis. The cornerstone of the District Court's decision is its determination that a cognizable racial-socio-economic minority resides in part of Marion County's Center Township. First the Court identified the geographic boundaries of this area which it termed the "Center Township Ghetto"—a low per capita income, substandard housing, low-education neighborhood inhabited mainly by Negroes. It employed selected demographic, economic and social statistics from the 1960 census and other sources to aid in delineating this Ghetto area. The Court found that this Ghetto area had an interest in such areas of substantive law as housing regulations, welfare programs, garnishment statutes and unemployment compensation which diverged significantly from the interests of non-residents of the Ghetto. Then the District Court compared the number and percentage (relative to population) of elected legislators who resided within the Ghetto with the number and percentage of elected legislators who resided in other areas of the Marion County multi-member district. The Court found that a lower percentage of legislators relative to population residing in the Ghetto had been elected from 1960 to 1968. The Court also found that a disproportionately higher percentage of legislators were elected from a higher-income, predominantly white area, Washington Township, over the same period as well as that a much more disproportionate percentage were elected from a middle-income Negro area in Washington Township.

According to the Court, the evidence indicated that the two dominant political parties had strong organizations which controlled nomination of the respective parties' slates; that straight ticket voting is common and one party or the other tends to sweep all legislative seats in a given election; and that legislators are reluctant to buck the consensus of their party's delegation and that this reluctance has developed because of the common constituency of the legislators and because of the strength of the county party organizations in controlling nominations.

There was no finding by the Court of any purposeful design or plan by state officials to frustrate the voting rights of Negroes or Ghetto residents. Nor, for that matter, was there a finding that the voting rights of the Negro Ghetto residents were in fact frustrated in the state legislature. Nevertheless, in light of the lack of control shown over nomination of legislators and because the system allegedly resulted in a legislative delegation in which no one was primarily responsible to ghetto residents, the Court concluded that the multi-member voting system was constitutionally defective in that it minimized the voting strength of Center Township Ghetto residents.

The Court gave the legislature to October 1, 1969, to reapportion the legislature. When the legislature failed to do so, the Court ordered the plaintiffs, intervening defendants and other interested parties to submit reapportionment plans. Only two were found numerically close enough to the "one-person, one-vote" standard to satisfy the Court, and one of these was rejected because it did not protect "the legally cognizable racial minority group against dilution of its voting strength." (A. 395). The December 15, 1969, Order of the District Court which reapportioned the State pursuant to the Court's plan was subsequently stayed by this Court, pending its decision on the appeal filed by the State of Indiana from the District Court's decisions.

ARGUMENT

INTRODUCTION AND SUMMARY

The District Court's conclusion that the multi-member legislative districts in Marion County contravene the equal protection clause is not based on any finding that the intended purpose of the Indiana legislative apportionment statute establishing the multi-member districts was to discriminate against a racial or political minority; nor was there any finding that the effect of the multi-member districts was to preclude Negroes or Republicans or Democrats from being elected. In fact the evidence showed that both blacks and whites, Republicans and Democrats, have been elected from the multi-member districts in Marion County.

Instead, the Court based its conclusion of constitutional invalidity on the fact that a defined racial-socio-economic group had not elected a proportionate share of legislators who resided within their neighborhood and that, further, the multi-member districting plan did not protect them against a supposed dilution of their voting strength. The Court also based its decision on the alleged influence of party organizations over nominations and over the actions of legislators once elected as well as on the alleged unresponsiveness of various legislators who are elected at-large to various special interest groups within their constituency. Furthermore, the district court made the implicit assumptions that programs appealing to a racially based special interest group have a better chance of success with single-member districts and that a legislator must be a resident of a specific area and member of a special interest group in order to effectively represent it.

The reasoning as well as the conclusions of the district court are clearly without merit and are directly in conflict with the pronouncements of this Court on the requirements of the equal protection clause. In a series of decisions dating back to *Reynolds* v. *Sims,* 377 U.S. 533 (1964), and *Lucas* v. *Colorado,* 377 U.S. 713 (1964), this Court has made it clear that multi-member districts are not *per se* unconstitutional and may appropriately be used so long as they comply with the one-man, one-vote rule of *Baker* v. *Carr,* 369 U.S. 196 (1962). And that a multi-member districting scheme is open to a constitutional challenge as an "invidious discrimination" only on a showing that the scheme was designated to or would operate to minimize or cancel out the voting strength of racial or political elements of the population. *Burns* v. *Richardson,* 384 U.S. 73 (1966); *Fortson* v. *Dorsey,* 379 U.S. 433 (1965).

Inasmuch as the instant case contains no finding of a design or effect of cancelling out or minimizing the voting strength of Negroes or Republicans or Democrats, the multi-member districts in Marion County do not constitute an invidious discrimination barred by the equal protection clause. The evidence in the instant case indicated only that middle-class Negroes had proportionately more legislators resident in their neighborhood, and lower-income Negroes proportionately less resident in their neighborhood, than would be expected from their percentage composition of the total population of Marion County. But this Court has never adopted the extreme theory that a special interest group has a constitutional right to proportional representation in government of its special interests.

Moreover, in the absence of a demonstrated invidious discrimination, the multi-member versus single-member districting problem is a nonjusticiable political question within the criteria set out in *Baker* v. *Carr,* 369 U.S. 196, 217 (1962). However, the district court proceeded in the face of this well established doctrine and its July 28, 1969, Opinion is replete with conscious choices between competing policy and philosophical considerations. The philosophical and policy-based decision of choosing between the single-member and multi-member district is clearly one for the citizens of a state and its duly elected representatives, not a federal district court.

And, contrary to the assertion of the district court that legislative district lines should be drawn to maximize the voting strength of identifiable racial-socio-economic groups, the equal protection clause does not require, nor does it permit, the use of racial considerations in drawing district lines. The equal protection clause does not demand an alignment of districts for a state legislature to assure success at the polls of any race (*Mann* v. *Davis,* 245 F. Supp. 241 (E.D. Va. 1965) aff'd *sub. nom., Burnette* v. *Davis,* 382 U.S. 42), and a legislature which drew district lines with respect to preferring a race or color would be subject to attack for violating the Fourteenth Amendment. *Wright* v. *Rockefeller,* 211 F. Supp. 460 (S.D. N.Y. 1962), aff'd 376 U.S. 52; *Sims* v. *Baggett,* 247 F. Supp. 96, 108-109 (M.D. Ala. 1965). To use the equal protection clause in the manner suggested by the district court is to introduce the very distinctions between citizens that it so soundly condemns.

I. A MULTI-MEMBER DISTRICTING SCHEME DOES NOT CONTRAVENE THE EQUAL PROTECTION CLAUSE MERELY BECAUSE A COGNIZABLE RACIAL-SOCIO-ECONOMIC GROUP HAS NOT ELECTED A PROPORTIONATE SHARE OF REPRESENTATIVES.

The District Court substantially premised its holding that the Marion County multi-member districts contravened the equal protection clause on the fact that a defined racial-socio-economic group—the residents of the Center Township Ghetto—had not elected a proportionate share of legislators who resided within the Ghetto. We submit that this premise is patently inconsistent with the requirements of the equal protection clause as enunciated by this Court in reapportionment cases over the past decade and cannot serve as the basis for invalidating the multi-member districts in Marion County. We submit further that this Court has never adopted the theory that a special interest group has a constitutional right to proportional representation of its special interests in the government.

Following the *Baker* v. *Carr*[1] decision in 1962, this Court has been repeatedly called upon to elaborate on the ramifications of the *Baker* decision and to pass on the possible application of the equal protection clause to other apportionment problems involving either state or local government. The first real references to the single-member district versus multi-member district problem came in the 1964 companion cases of *Reynolds* v. *Sims*[2] and *Lucas* v. *Colorado.*[3]

In *Lucas* this Court discussed some of the practical problems in a system of election where a number of senators and representatives are elected on an at-large basis in a district. This Court, however, made it clear that it was not intimating that an at-large election of a number of legislators from a county or any political subdivision, was constitutionally defective.[4]

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[1] 369 U.S. 196 (1962).

[2] 377 U.S. 533 (1964).

[3] 337 U.S. 713 (1964).

In *Reynolds* v. *Sims,* this Court gave rather explicit approval to multi-member districts:

> Simply because the controlling criterion for apportioning representation is required to be the same in both house does not mean that there can be no differences in the composition and complexion of the two bodies * * * One body could be composed of single-member districts while the other could have at least some multi-member districts. (337 at 577)

And:

> A state may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. Single-member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multi-member or floterial districts. Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen of the State. (377 at 578, 579)

And in discussing permissible deviations from one-man, one-vote this Court noted:

> Citizens, not history or economic interest, cast votes. * * * A consideration that appears to be of more sub-

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[4] 377 U.S. at 731, footnote 21.

> stance in justifying some deviations from population-based representation in state legislature is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. (377 at 580, 581)

The first real challenge before this Court to multi-member district on equal protection grounds was *Fortson* v. *Dorsey.*[5] In this case the plaintiffs challenged a multi-member district for Fulton County (Atlanta), Georgia, where State Senators had to be residents of the subdistrict they represented although they were elected on an at-large, countywide basis. In reversing the district court, this Court held that the equal protection clause does not necessarily require formation of all single-member districts in a state's apportionment scheme. Then this Court went on to deliver the much referred to statement that:

> It might well be that, designedly or otherwise, a multiple-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still

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[5] 379 U.S. 433 (1965).

> passes constitutional muster. This question, however, is not in the record before us. (379 U.S. at 439)

In *Burns* v. *Richardson*,[6] this Court again found that insufficient proof had been presented to strike down the Hawaiian multi-member districting scheme on equal protection grounds. This Court held essentially that the use of multi-member districts was open to a constitutional challenge as an "invidious discrimination" *only* on a showing that the plan was designed to or would operate to minimize or cancel out the voting strength of racial or political groups. This Court did provide some dicta which the District Court in the instant case relies heavily on for support. It stated:

> It may be that this invidious effect can be more easily shown if, in contrast to the facts in *Fortson*, districts are large in relation to the total number of legislators, if districts are not appropriately subdistricted to assure distribution of legislators that are resident over the entire district, or if such districts characterize both houses of a bicameral legislation rather than one. But the demonstration that a particular multi-member scheme effects an invidious result must appear from evidence in the record. (384 U.S. at 88)[7]

During this same period this Court had before it several other cases in which multi-member districting was present.

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[6] 384 U.S. 73 (1966).

[7] It should be noted that this statement does not represent, as the District Court would seem to infer, a deliniation of the crucial factors in showing a particular scheme perpetrates an invidious discrimination; rather it appears to be a direct response to points raised in the Brief of John Burns, Governor of Hawaii, in the *Burns* case. That Brief noted that 12% of one house came from one multi-member district, that there was no subdistricting as was present in *Fortson*, and that both houses were apportioned using multi-member districts (see pages 80-85 of the Burns Brief). Thus this Court may well have just been saying that these factors "may be used" in trying to show the discrimination, not that their presence constitutes a prima facie case of invidious discrimination.

In *Kilgarlin* v. *Martin*, 252 F. Supp. 404 (S.D. Texas 1966), the plaintiffs objected to multi-member state legislative districts which existed in four of the most populous Texas counties on the grounds that they allegedly minimized the voting effectiveness of Negroes and other minority groups. Plaintiffs introduced evidence which tended to show that the multi-member districts in Dallas County had resulted in the total exclusion of Negro candidates from office in this century even though there were enough Negroes to create one predominately Negro single-member district. Evidence was also adduced to show that other minority groups were submerged in the multi-member districts. The district court rejected these claims and gave the non-Negro minorities rather short shrift, pointing out that *Reynolds* v. *Sims*, 377 U.S. 533 (1964), holds that voting is a personal, not group, right, protects no political party or factions right to representation, and states that the "[l]egislature represents people, not trees or acres . . . farms or cities or economic interest." See 252 F. Supp. at 432-433 citing 377 U.S. at 561-62, 579-90. The district court dealt separately with the Negroes' claims but treated them as one of racial gerrymandering which requires clear evidence as to racial purposes. See 252 F. Supp. at 434-437. The district court found that the multi-member districts did not violate the equal protection clause. This Court affirmed that plaintiffs had failed in their proof of political and racial gerrymandering but did reverse and remand the case on the question of impermissible population variances between districts, *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967).[8]

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[8] This Court also affirmed without opinion at least three other cases: *Yancy* v. *Faubus*, 251 F. Supp. 948 (E.D. Ark. 1965) aff'd (*Crawford County Bar Ass'n* v. *Faubus*) 383 U.S. 271 (a districting scheme is not unconstitutional just because it utilizes multi-member districts); *Schaefer* v. *Thompson*, 251 F. Supp. 450 (D. Wyoming 1965) aff'd (*Harrison* v. *Schaefer*) 383 U.S. 269 (do not have to subdistrict multi-member districts); *Mann* v. *Davis*, 245 F. Supp. 241 (E.D. Va. 1965) aff'd (*Burnette*

Read together these cases show recognition on the part of this Court that the multi-member versus single-member district problem, unlike the voter equality problem of the one-man, one-vote cases, is essentially a political decision within the purview of the states and not an equal protection problem under the 14th Amendment. As we demonstrate later in the brief, this position as to the political nature of the question is well taken; at the same time we can understand why this Court might want to leave the door open for a challenge to a districting scheme that perpetrated a particularity "invidious discrimination." However, this Court appears to be reluctant and correctly so, to apply the equal protection clause in the absence of a situation somewhat like *Gomillion* v. *Lightfoot*[9] where an effort to actually deprive individuals of their voting rights is readily apparent from the circumstances, whether it can be proven as such or must be inferred.

A number of the equal protection challenges to multi-member districts have involved allegations and/or findings of conscious purpose on the part of state officials to submerge minority voting strength through the creation of multi-member districts. Thus in *Mann* v. *Davis*, 245 F. Supp. 241 (E.D. Va., 1965) aff'd (*Burnette* v. *Davis*), 382 U.S. 42, it was alleged that the multi-member district near Richmond was established specifically in response to rising

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v. *Davis*), 382 U.S. 42 (multi-member districts are permissible and it is not permissible to draw lines to assure the success of any race at the polls). And in *Drew* v. *Scranton*, 229 F. Supp. 310 (M.D. Pa. 1964), the District Court held unconstitutional a districting scheme that included both multi-member and single-member districts on the grounds that the residents of single-member districts were discriminated against. This Court vacated the decision and remanded it, which in effect gave the state legislature more time to reapportion. 379 U.S. 40. The District Court's decision in *Drew* would mean that multi-member districts are *per se* unconstitutional. Such a holding is clearly inconsistent with the holdings of this Court in *Fortson* v. *Dorsey*, *supra*; *Burns* v. *Richardson*, *supra*; *Mann* v. *Davis*, *supra*; and *Yancy* v. *Faubus*, *supra*.

[9] 364 U.S. 339 (1960).

Negro and Republican voting strength.[10] In *United States v. Democratic Executive Committee of Barbour County*, 288 F. Supp. 943 (M.D. Ala. 1968), a state change from beat to at-large election of local officials in the face of rising Negro voting registration in certain beats was held to be a purposeful denial of Fifteenth Amendment rights. And in *Sims* v. *Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965), the court found that multi-member districts were created for the purpose of preventing the election of Negroes to the legislature, the districts having been created by combining majority white and majority black counties in multi-member districts.

But there are no such allegations or findings in the instant case. In fact plaintiff Chavis, himself a Negro legislator, was a member of the legislature and supported the enactment of the present multi-member districts for Marion County.[11] The absence of any such purpose of submerging minority voting power, either express or implied from the facts of the case, should in and of itself furnish ample grounds for this Court to reverse the District Court and to uphold the Marion County multi-member districts.

Moreover, in the instant case there was not even a showing of non-purposeful "invidious discrimination."[12] Instead the evidence was directed at showing that within a given area of Marion County there exists what might be described as a special interest group of relatively poor, low-education, Negro citizens and that in the past decade this area has had proportionally less legislators resident in it than has been true of other defined areas of the county. It is most difficult to see how this constituted a denial of equal protection of the laws. There is no right to have a representative of any given special interest group; there is no right to have a representative living in one's immediate neighborhood.

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[10] See pages 8-17 of Appellant's (Burnette's) Jurisdictional Statement to the Supreme Court filed in *Burnette* v. *Davis*.

[11] See Transcript of Proceedings, pp. 101, 103 (Cross-Examination of Patrick Chavis).

[12] Both Republicans and Democrats, Negroes and whites, have been elected as senators and representatives over the past ten years. Moreover, while the plaintiffs were showing that there were proportionately less elected representatives who lived in the Center Township Ghetto, their figures showed that Census Tract 220—a predominantly middle-class Negro area—had about 10 times the number of elected representatives residing within it than would be true if it had a proportionate share of representatives. See tables 7, 8—305 F. Supp. 1364 at 1833, 1384. Thus, the plaintiffs are complaining, not about the absence of Negroes in the legislature, but rather about a non-proportionate number of poorer, less-well educated Negroes.

The Court has never adopted the extreme theory that a special interest group has a constitutional right to proportional representation in government of its special interests. Compare this Court's refusal to allow population variances "in order to create districts with special interest orientation. . . ." *Kirkpatrick* v. *Preisler,* 394 U.S. 526 at 533; *Reynolds* v. *Sims,* 377 U.S. 533 at 561-562. Compare also *Hoyt* v. *Florida*, 368 U.S. 57, 69: "In the administration of the jury laws proportionate class representation is not a constitutionally required factor."[13]

The instant case involves no more than plaintiffs saying, in effect, that we think we would have a better chance to elect someone of our special interest group if we had single-member districts—thus we have been denied equal protection. This contention is clearly without merit and should be no more availing than those who seek court approval for a different set of district lines they feel would be more advantagous to their political interests. See *Wright* v. *Rockefeller,* 376 U.S. 52 (1964), aff'g 211 F. Supp. 460.

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[13] See also, *Clay* v. *United States,* 397 F.2d 901, 912 (5th Cir. 1968), rehearing denied en banc, vacated and remanded on other grounds *sub. nom. Giordano* v. *United States,* 394 U.S. 310 (". . . nothing in the Constitution or the Universal Training and Selective Service Act requires racially proportionate selective service boards.").

Consequently, the District Court should be reversed on precisely the same grounds on which the *Burns* and *Fortson* cases were decided—*i.e.* failure to show any invidious discrimination connected with this particular multi-member districting scheme.

II. IN THE ABSENCE OF A DEMONSTRATED INVIDIOUS DISCRIMINATION, THE MULTI-MEMBER VERSUS SINGLE-MEMBER DISTRICTING PROBLEM IS A NON-JUSTICIABLE POLITICAL QUESTION.

An examination of the complaint, the evidence offered at the trial, and the District Court's opinions makes it clear that the District Court's decision involves a federal court making clearly political choices between competing political alternatives and philosophies. This is precisely the type of problem that the courts have traditionally and wisely avoided dealing with as being inappropriate for judicial determination. Not only are these problems appropriate for legislative, as opposed to judicial, determination but they also are state, as opposed to federal, political questions. In the absence of a clearly demonstrated contravention of the Constitution, federal courts cannot properly be concerned with them.

In *Baker* v. *Carr*, this Court set down criteria for determining whether a question presented to the Court was a non-justiciable political question; one of those criteria is a "lack of judicially discoverable and manageable standards for resolving it."[14] As to determining the size of districts, the standard is relatively easy—perfect equality between them in terms of legislators per voter is required. But, as this brief points out in Sections I and III, the weaknesses in the District Court's opinion show how difficult a standard is to come by on the multi-member, single-member district problem. And Mr. Justice Harlan, dissenting in *Reynolds* v. *Sims*, asserted: "No judicially manageable standard can determine whether a State should have single member districts or multi-member districts or some combination of both.'"[15]

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[14] 369 U.S. at 217.

Another criteria of a non-justiciable political question enunciated in *Baker* v. *Carr* is "the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion."[16] A brief look at the multi-member district versus single-member district problem demonstrates that it is clearly within this criterion and is therefore non-justiciable. Numerous arguments are made pro and con both types of districts. Many of these arguments are either rooted in a particular political philosophy or based on the visceral reactions of persons involved in the political process; relatively few can be said to be supported by solid empirical evidence.[17]

Among the arguments often advanced are:

1. Single-member districts make drawing boundaries more difficult, particularly in rapidly growing urban areas with shifting populations that may require frequent redistricting to conform to the one-mane, one-vote rule. And, following existing political boundary lines such as counties decreases the opportunities for gerrymandering to suit particular parties, philosophies or candidates.

2. Multi-member districts are criticized for encouraging large numbers of persons to run in primary elections with the result that voters may find it more difficult to make an

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[15] 377 U.S. 533, 621.

[16] 369 U.S. at 217.

[17] Probably the best effort in this regard is Malcolm Jewell's Metropolitan Representation; Legislative Districting in Urban Counties (National Municipal League—1969); yet by his own admission it is only a preliminary assessment of the ultimate effects of districting systems.

informed choice. At the same time, multi-member districts allegedly increase the influence of party organizations and other indorsing groups in primary elections.

3. Elections in single-member districts allegedly concentrate on the candidates; elections in multi-member districts concentrate on the broad issues rather than on candidates.

4. Single-member districts are alleged to increase the prospect for some representation of minority groups and divergent viewpoints. A distinct, but related, problem is which system most effectively represents the minority interests—such as black interests. While single-member districting may tend to create some largely-black districts, it also tends to create many more all-white districts which may have little or no sense of responsiveness to black districts' needs and which are capable of creating more intensive pressures on their representative on controversial issues such as open housing than may be true of an at-large member. It is argued with some persuasion that multi-member districts force the representatives to consider a larger variety of interests and opinions before voting. This gives them more ability to choose between competing interests which after all is at the heart of government and perhaps more freedom to vote their consciences rather than just voting the way of a single dominant interest. And legislators with broader interests would not be as likely to fragment approaches to statewide problems and programs on the basis of their very localized interests.

5. A legislator from a single-member district is allegedly more responsive to his constituents' needs and local interest groups whereas a legislator from a multi-member district is allegedly more likely to be broad issue oriented and responsive to political parties and less amenable to other pressure groups.

These arguments demonstrate that policy implications are paramount in the multi-member, single-member districting problem. Among the policy considerations that can be discerned are: (1) Should the election of state legislators be centered on issues rather than candidates and personalities? (2) Should the legislators be local-issue oriented, or state-wide issue oriented? (3) Should development of political parties and political party responsibility be fostered? (4) Should legislators be subservient to pressure groups or should they be insulated as much as possible from the pressures of interest groups? (5) What is the best means of assuring effective representation to minority interests?

Thus the multi-member, single-member districting problem is clearly within this Court's established criteria for a non-justiciable political question. But the District Court proceeded in the face of this established doctrine and its opinion contains numerous examples of conscious choices between these competing policy considerations. Thus we see the court saying:

> The positions on political issues by the legislators elected from Marion County at large tend to coalesce, causing these legislators to maintain a common indifferentiated position. This effect is largely the result of election at large from a common constituency and obviates representation of a substantial, though minority, interest group within that common constituency.[18]

And,

> "The testimony shows that the county organizations of the two major political parties in Marion County, and particularly the County Chairmen, exert a very substantial influence over the nomination of General Assembly candidates. This pervasive influence would be substantially diminished by the use of specific single-member districts because the ability of candidates with sectional attractiveness to

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[18] 305 F. Supp. at 1385.

> overcome the party's primary election recommendations would increase."[19]

And,

> "The testimony also shows the Marion County political organizations continue to exert considerable control over the actions of Marion County legislators after they are elected. This control results in part from the multi-member districting scheme."[20]

Furthermore, the District Court makes the implicit assumptions that programs appealing to the ghetto area will have a better chance of success with single-member districts and that a person must be a resident of a specific area and member of a special interest group in order to effectively represent it. These assumptions are highly speculative and dubious at best. They relate to questions of representational theory best left to the citizens of the State of Indiana.

This improper incursion by the District Court into a nonjusticiable political question appropriate only to the people of Indiana and their elected representatives cannot be sanctioned, and the decision of the District Court should be reversed.[21]

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[19] *Ibid.*

[20] *Ibid.*

[21] Moreover, given the political nature of the problem, we respectfully refer this Court back to the discussion of Mr. Justice Brennan in *Baker* v. *Carr* concerning the "Guaranty Clause". See 369 U.S. at 208, *et seq.* Under Art. IV of the Constitution, each state is guaranteed a republican form of government. According to *Baker* v. *Carr*, under the guaranty clause legislative apportionment as an element of the republican form of government is a "political question" and non-justiciable whereas legislative apportionment as an element of equal protection is not a political question and is justiciable. We submit that the multi-member district versus single member district problem is essentially a political question and not a civil rights-equal protection problem which is justiciable. The guaranty clause and not the 14th Amendment controls the present case. Since there was no showing of a violation of the equal protection clause and since multi-member districting is certainly acceptable within a republican form of government, the District Court's decision should be reversed.

III. THE EQUAL PROTECTION CLAUSE DOES NOT REQUIRE, NOR DOES IT PERMIT, DRAWING LEGISLATIVE DISTRICT LINES TO PROTECT COGNIZABLE RACIAL-SOCIO-ECONOMIC GROUPS AGAINST DILUTION OF THEIR VOTING STRENGTH

The District Court's decisions embody a separate but equal philosophy that this Court has specifically found repugnant to the Constitution.[22] Implicit in the July 28, 1969, decision is an instruction that districting should allocate the specified minority group a portion of the seats. For example, the District Court says:

> The figures also show that the 1967 Ghetto Voting Area 'of the complaint was under-represented in the Senate (it had approximately half the Senators it should have had.)[23]' * * * The Negro Center Township Ghetto population is sufficient in size to elect approximately two members of the House of Representatives and approximately one Senator if these were specific single-member legislative districts within Marion County. (305 F. Supp. 1364 at 1385)

In its December 15, 1969 Order, the District Court was more explicit as to its belief that district lines should be drawn to maximize the voting strength of identifiable racial-socio-economic groups. It said:

> In districting Marion County, two of the plans submitted received primary consideration, the plan of the plaintiffs, and the plan of the intervening defendants. It is the opinion of the Court that the plaintiffs' plan for districting Marion County more nearly meets the constitutional standards laid down

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[22] See, *e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

[23] 1/4 the Senators and 1/3 the Representatives if the figures on page 1384 of 305 F. Supp. are used.

> by the Supreme Court as followed by this Court in its opinion of July 28, 1969. We note in the intervening defendants' plan large suburban areas are combined with parts of the Center Township ghetto area. In fact, in seven instances the intervening defendants' plan combines suburban areas with portions of the Center Township inner city. As we observed in our opinion of July 28, 1969, sophisticated gerrymandering has been soundly condemned. *Gomillion* v. *Lightfoot. . . . Plaintiff's plan also protects the legally cognizable racial minority group against dilution of its voting strength. . . .* (emphasis added) (A. 394, 395).

Of course, if the state legislature undertook to define the districts with racial considerations in mind, it would be subject to attack for violating the equal protection and due process clauses of the Fourteenth Amendment and the Fifteenth Amendment. See *Wright* v. *Rockefeller,* 211 F. Supp. 460 (S.D. N.Y. 1962), aff'd 376 U.S. 52; *Mann* v. *Davis,* 245 F. Supp. 241 (E.D. Va. 1965), aff'd sub. nom. *Burnette* v. *Davis,* 382 U.S. 42; *Sims* v. *Baggett,* 247 F. Supp. 96, 108-109 (M.D. Ala. 1965). In *Wright* the Court found that plaintiffs had failed to show that congressional lines were drawn on racial and national origin lines and so their complaint was dismissed. As Justice Douglas said while dissenting in *Wright* at pages 66, 67:

> Racial electoral registers, like religious ones, have no place in a society that honors the Lincoln tradition—'of the people, by the people, for the people.' Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the motion that District A must be represented by a Negro, as it is with the motion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. *Cf. Gray* v. *Sanders,* 372 U.S. 368, 379. The racial electoral register system weights votes along one

> racial line more heavily than it does other votes. That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense. Of course race, like religion, plays an important role in the choices which individual voters make from among various candidates. But government has no business designing electoral districts along racial or religious lines.* * *
>
> When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; anatagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here.
>
> "Separate but equal" and "separate but better off" have no more place in voting districts than they have in schools, parks railroad terminals, or any other facility serving the public.

And in *Mann* v. *Davis*, 245 F. Supp. 241 (E.D. Va. 1965), aff'd *sub. nom.* (*Burnette* v. *Davis*) 382 U.S. 42, the district court held that district lines could not be drawn with respect to preferring a race or color and that a multi-member districting scheme was not unconstitutional on the grounds that it deprived Negro citizens of a chance to elect one of their own race. Thus the court specifically held that the equal protection clause does not demand an alignment of districts for a state legislature to assure success at the polls of any race.

Concomitantly, to use district lines to separate blacks and whites was precisely the evil struck down in *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

The District Court appears to recognize the problem but tries to have its cake and eat it too. It says (305 F. Supp. at page 1394):

> In the performance of its tasks the General Assembly may wish to give consideration to certain principles of legislative apportionment brought out at the trial in these proceedings.
>
> In this regard, the Court in no way intends to intimate by this opinion that the Negroes residing in the Center Township Ghetto are entitled to a certain number of legislators. Legislative districts are to be drawn with an eye that is color blind; but the court notes that sophisticated gerrymandering has been soundly condemned. *Gomillion* v. *Lightfoot.*

Of course, as noted earlier, the District Court in ordering into effect a plan made its selection on the grounds that the selected plan protected "the legally cognizable racial minority group against dilution of its voting strength." Thus the Court itself relied on racial factors in drawing the lines—certainly sophisticated and unconstitutional gerrymandering at its worst.

The illogical nature of the District Court's reasoning is apparent from the dilemma it poses for the Indiana General Assembly. Since the multi-member scheme fell as contravening the equal protection clause because the "1967 Ghetto Voting Area" was underrepresented in the Senate, then the legislature would have to make sure that the single-member district lines were drawn to assure that the "1967 Ghetto Voting Area" would receive a pro-rata share of Senators lest it also fall short on equal protection grounds. But to comply with the District Court's reasoning, the legislature would have to proceed directly in contravention of well-established constitutional doctrine that race cannot be a factor in drawing district lines.

This dilemma results directly from trying to apply the equal protection doctrine to a question it is not well suited to handle. Subtle discriminations can be perceived in single-member districts as well as in multi-member districts and the equal protection clause is inappropriate as the vehicle for a racial, religious or ethic group trying to advance its own interest at the expense of another such group. To allow the use of the equal protection clause in this context is to introduce the very distinctions between citizens that it so soundly condemns. Consequently, the District Court's decision should be reversed and not allowed to stand as a retreat to the separate but equal doctrine of *Plessy v. Ferguson.*[24]

CONCLUSION

For the above stated reasons, the amicus curiae respectfully urges this Court to reverse the District Court and hold that the Marion County multi-member districts do not contravene the equal protection clause.

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[24] 163 U.S. 537.

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JOHN E. DAVIS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~1100~~ 92

EDGAR D. WHITCOMB, Governor of Indiana
and Chairman of the State Election Board,
Appellant,

vs.

PATRICK CHAVIS, et al.
Appellees.

On Appeal From The United States District Court For The
Southern District Of Indiana

BRIEF OF THE APPELLEES

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IN THE

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OCTOBER TERM, 1969

No. 1198

EDGAR D. WHITCOMB, Governor of Indiana
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Appellant,

vs.

PATRICK CHAVIS, et al.
Appellees.

On Appeal From The United States District Court For The
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BRIEF OF THE APPELLEES

OPINIONS BELOW

The July 28, 1969 opinion of the District Court appears at 305 F.Supp. 1364 and the December 15, 1969 opinion appears at 307 F.Supp. 1362. The opinions appear at pages 331 and 390 of the single appendix.

JURISDICTION

Final judgment in this cause was rendered on December 15, 1969 and a notice of appeal was filed on December 21, 1969 and the appeal was docketed within time, on February

18, 1970. This Court has jurisdiction under Title 28, United States Code, Section 1253.

QUESTIONS PRESENTED

1. Whether the district court was clearly erroneous in finding that fifteen-member and eight-member legislative districts in Marion County, Indiana dilute the voting rights of negro ghetto residents.

2. Whether Uniform Districts are required by the one-man-one-vote principle.

STATEMENT OF THE CASE

This action was brought on January 9, 1969 as a 42 U.S.C. 1983 lawsuit for the purpose of requiring a subdivision of the multi-member state legislative seats apportioned to the most populous [Marion] county in the State of Indiana. On July 28, 1969 the lower court rendered a decision finding that the legislative districts for both houses of the Indiana General Assembly were malapportioned on a traditional one-man-one-vote basis apart from the plaintiff-appellees' complaint as to the multi-member districting of Marion County, Indiana. The lower court further ruled that a reapportionment of the Indiana General Assembly would be necessary before the next election. The lower court also found that the multi-member districting of Marion County, Indiana diluted the voting rights of citizens of a *Ghetto Area*[1] and suggested that this factor as well as a *Uniform Districting*[2] principle should be considered by the State of Indiana in any reapportionment which it might conduct. The State of Indiana was given sixty days in which to act. The State of Indiana took no action. Then on December 15, 1969, after considering various reapportionment plans submitted by various parties and non-parties, the lower court ordered its own reapportionment plan into effect adopting as part of its plan a districting plan for Marion County, Indiana which had been submitted by the plaintiffs. It was this order of December 15, 1969 that subsequently was stayed by this Court.

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[1] Defined by the lower court as: "A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominantly by members of a racial, ethnic, or other minority group, most of whom are of lower socio-economic status than the prevailing status in the metropolitan area and whose residence in the section is often the result of social, legal, or economic restrictions or custom.

SUMMARY OF ARGUMENT

Certain negative descriptions of appellee's case are appropriate to this summary. Appellees do *not* contend that the race or ethnic background of legislators can have anything but the most minimal significance in determining whether the citizens of a given locality are entitled to have a multi-member legislative district broken up. Appellees likewise do *not* contend that any demonstration as to where the elected representatives live within a multi-member legislative district can constitute a conclusive or near-conclusive showing that any voting rights dilution results from such a district. Finally, appellees do *not* contend that minority groups are entitled to have district lines drawn in such a manner as to enhance their voting power. To the extent that the appellants and amici have suggested that the appellees are relying on the three foregoing possible contentions they have mis-characterized the appellees' case.

The appellees contend that there is in Marion County, Indiana a cluster of census tracts which are characterized by racial, social and economic attributes demonstrable by census statistics and by other statistics and that these attributes cause the citizens and voters living in this cluster of census tracts to have substantive legislative interests which diverge significantly from those of the citizens living in the balance of the county. The appellees further contend that this cluster of census tracts which the lower court referred to as "*The Ghetto Area*" is of a size sufficient to dominate the vote in two to four single member representative districts and one or more single member senate districts but not of a size sufficient to significantly influence county-wide elections in Marion County's county-wide multi-member district. This is so, the appellees will demonstrate, not only because the county-wide vote is large in comparison to the Ghetto vote, but also because there is a white-suburbanite belt in Marion County which is statistically as cognizable as the Ghetto Area and which regularly casts a bloc vote politically the opposite of the bloc vote cast in the Ghetto area, cancelling out the Ghetto's bloc vote in county-wide elections. It also will be shown that the proof in the trial court below demonstrated that the bloc vote in the Ghetto area is not the result of inverse racism and is directed only to substantive interests. For example, at the time of trial, three of the fifteen members of Marion County's house delegation to the Indiana General Assembly were Negro but all three had been beaten by a three-to-one vote in the Ghetto Area in the county-wide election which put them in office. Their losing opponents were white. All three regularly voted *en bloc* with the remainder of the Marion County house delegation and these votes included at least three which were obviously inimical to the voting rights of negroes. It was and is the contention of the appellees that the demographic and socioeconomic facts which obtain in Marion County, Indiana entitles the voters of the Marion County Ghetto to such subdivisions of Marion

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[2] I.e., that legislative districts in each legislative house must be identical in population rather than merely have the same proportion between number of residents and number of legislators.

County's legislative district as would render it possible to elect legislators who would consider themselves beholden to the substantive interests of negroes and poor persons if they desired to be re-elected. It is in no way the contention of the appellees that there should be a certain number of black faces on the Marion County state legislative delegations. The evidence demonstrated conclusively that the ghettoization of the people in Marion County's Ghetto Area was an involuntary one resulting from historical factors of a type often noted by this Court in relation to the South. The evidence, in short, demonstrated that the continued multi-member districting of Marion County legislative seats would permit the affluent and near-affluent majority in Marion County, Indiana to cause their state government to ignore the interests and needs of those whom they have segregated from their neighborhoods, their schools and from other public services and facilities.

The appellees also contend that the uniform districting of state legislative delegations particularly in Indiana, is a distinct Constitutional must. The evidence below showed that county party organizations in Indiana control the nomination of state legislators, particularly in large metropolitan areas, and dominate and control the activities and votes of such legislators in the General Assembly. The general bloc voting propensities of multi-member district delegations also was demonstrated. Together with the foregoing it also was shown that multi-member districts of differing size constitute a mathematical violation of one-man-one-vote. The mathematical demonstration was based on the premise that any meaningful enforcement of the one-man-one-vote principle must take into consideration the self-evident fact that the degree of responsiveness which a voter can expect from his government exists in direct proportion to the likelihood that such a voter may, on some future occasion, cast a deciding vote. This self-evident principle carries over and is applicable to the degree of influence which the legislators which the voter elects may exert in the legislature. It is evident, as a practical matter, that voters who elect a fifteen-member multimember district delegation to a one-hundred-man legislative body will enjoy distinct mathematical advantages over the voters in single-member districts and in smaller multimember districts particularly where, as here, the multimember district delegations indulge in intensive bloc voting. It is not as evident but definitely a fact [a fact admitted by appellants in the lower court] that the mathematical likelihood that a voter will cast a decisive vote does not decrease in inverse proportion to the increase in the size of a voting district where additional representatives are provided such distrct to compensate for its increased size. The decrease is, rather, proportionate only to the increase in size of the square root of the raw figures involved.[3]

There are additional reasons for holding that uniform districting is a Constitutional must. These result from recent decisions by this Court holding that the boundary lines of geographic sub-divisions must be disregarded in the quest for one-man-one-vote perfection and holding that a reapportionment plan which comes closest to achieving such perfection must be regarded as the only legal plan. The elimination of county lines and other geographic and political sub-divisions lines as a basis for permitting slight one-man-one-vote deviations results in an unprecedented license for political cartography in the drawing of state legislative districts unless the "nearness-to-perfection" criterion is enforced with the same vigor which the states themselves previously have employed in enforcing the preservation of county lines and other political subdivision lines. To permit multi-member districts of differing size necessarily would involve permitting the enactment of reapportionment plans which would not be subject to comparison with other plans and which could achieve "near-perfection" under naive one-man-one-vote criteria while enjoying an almost total license to gerrymander. In the State of Indiana, if either of the major parties were to have control of the legislature together with such license in the next assembly session in which a reapportionment is to take place, either such party could achieve an almost assured eighty percent of the membership of the Indiana General Assembly during the following decade regardless of the outcome of future elections. The principle of uniform districting is necessary to a meaningful implementation of the one-man-one-vote mandates of this court and the principle of small districts where socio-economic classes in the state are involuntarily ghettoized is necessary to a meaningful and responsive state government, and necessary as well to the vindication of the voting rights of all citizens.

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[3] E.g. Given a voter in a district with four voters and one representative vis-a-vis a voter in a district with sixteen voters and four representatives, the likelihood that the second given voter will cast the deciding vote in the election of any given legislator is one half and not one fourth that of the same likelihood in the case of the first given voter.

I

The Lower Court's Finding That Fifteen-Member And Eight-Member Multi-Member Legislative Districts In Marion County Constitute A Voting Rights Dilution was not Erroneous

On pages 21 through 23 of his brief the Appellant, Whitcomb presents a critique of the analysis by which the lower court determined that a Ghetto Area exists in Marion County, Indiana which has substantive interests which diverge significantly from the substantive interests of the balance of the citizens and voters of Marion County, Indiana. The lower court did use a different method in demonstrating the existence of a Ghetto Area in Marion County from that used by appellees in their complaint and proof. The appellees used the plodding device of selecting the census tracts in Marion County, Indiana which have the highest percentage of negro population and which are sufficiently contiguous to form a cluster and then performing arithmetical averagings of their other social characteristics and comparing them to the characteristics of the balance of Marion County. The lower court adopted a far more sophisticated method of analysis in rendering its opinion. This happened because the lower court had available to it certain expensive and comprehensive socio-economic studies of Marion County, Indiana which had not been known to or available to the appellees at the time they were preparing their case. These studies were introduced into evidence at the trial by the defendant-appellants and it is to be noted that almost all of the lower court's statistical findings are based upon defense exhibits rather than upon the evidence of the plaintiff-appellees.

On page 22 of his brief the appellant, Whitcomb urges that "rather than selecting census tracts randomly from the county to discover whether there was an area which within the county sufficiently differentiated from the rest of the county, the district court's starting point was that a 'ghetto' did in fact exist. If reasoned from its own assumptions." While the lower court's opinion might be characterized as indicating that the conclusion that a Ghetto Area exists in Marion County was a conclusion quickly arrived at, it does not follow that the lower court was assuming the existence of such a ghetto and reasoning from its assumptions. The appellants are ignoring the evidence which was presented at the trial and which was so conclusive as to the existence of the alleged ghetto as to leave the lower court very little to determine on that point.

At the conclusion of the plaintiff-appellees' case a total of 118 admitted requests for admissions were introduced into evidence without objection by the State of Indiana (App. 257, 258)

These admitted requests for admissions in evidence include and cover the following facts: "That 1960 United States Census tracts 220, 501, 502, 503, 508, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 528, 529, 530, 531, 534, 535, 536 and 540 are contiguous tracts in Marion County, Indiana [2][4] and that as of the 1960 United States Census the 1960 Ghetto Area so described contained 105,808 inhabitants including 75,221 negro or non-white inhabitants and about 30,587 white inhabitants. [5] As of the 1960 census the balance of Marion County, Indiana, outside the 1960 Ghetto Area consisted of only about 4.17% negro inhabitants. [9]

As of the 1960 Census the aforesaid 1960 Ghetto Area contained about 15.8% of the inhabitants of Marion County, Indiana [10] while containing about 40.05% of the dilapidated housing units in Marion County, [11] 29.12% of the Marion County population dependent upon public transportation to go to and from work, [12] about 22.00% of the Marion County population housed in dwellings containing fewer rooms than inhabitants, [13] and 28.74% of the unemployed in Marion County. [14] As of 1960 the median family income for Marion County was $6,609 [15] while the median family income for negro families living in Marion County Census tracts with more than 400 such families was $4,390. [16] The 1960 Ghetto Area also had 31.47% of the Marion County inhabitants over 25 who had not completed four years or more of formal education [i.e. statistical functional illiterates] [17] and only 3.86% of the college graduates of Marion County [19] when four census tracts are excluded from the Ghetto cluster on the basis of the fact that they are populated in part by white university students and graduate students living near institutions of higher learning. [22] As of 1960 the median years of education was 11.5 years for residents of Marion County over age 25 while the comparable figure for non-whites in Marion County was 9.2 years [19]. Other admissions established that: *De Facto* segregation is rampant in the public schools of Marion County [29], infant mortality for non-whites is far greater than the rate for whites [30], as is the mortality rate for non-infants [31], 72% of the Aid for Dependant Children was for negroes in Marion County as compared to a negro population percentage figure of about 14% [32], the illegitimate birth rate among non-whites in Marion County is far greater than it is among whites [33], and that the handling of negro juvenile cases were and are, as a matter of uncontrollable circumstances and as a matter of policy, far more likely to result in a life of crime in the case of negro youths in Marion County and in Indiana than in the case of white youths. [35-37] It also was admitted that the aforesaid Ghetto Area would almost certainly control the election of at least three representatives and one senator to the Indiana General Assembly in the event of single member districting [55 & 56] and that in a recent election in which the substantive interests of negroes and poor people were very much in issue, the Ghetto Area of Marion County had returned a substantial bloc vote nominally consistent with such interests while the county-at-large cast a vote sufficiently similar that the Ghetto bloc vote was unnecessary to the county-wide result which was achieved. [57-65]

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[4] This number and the numbers in parentheses which follow are the numbers of the admitted requests for admissions which established the facts recited immediately before each such number. [See App. 92-115]

The admitted requests for admissions in evidence also demonstrated that as of the 1960 census there was an area in Marion County, Indiana which could be labeled "The White Suburbanite Belt" which consisted of Marion County outside Indianapolis which contained 31.68% of the Marion County population [74] while containing 44.02% of the families in Marion County which had a family income of more than $9,000 [75], 38.68% of the college graduates living in Marion County [77], 51.51% of the houses containing more than one bathroom in Marion County [81] and it delivered 48.73% of the vote cast for the party not supported by the Ghetto Area in the last preceding election [82] while it contained only 18.37% of the families which had a family income of less than $4,000, only 13.46% of the dwelling units built before 1939 [78], only 1.86% of the negroes [79], and only 14.43% of the deteriorating or dilapidated houses in Marion County, Indiana.

The said evidence presented regarding the Ghetto Area vis-a-vis the remainder of Marion County, Indiana demonstrated that the complained of multi-member districts "operate to minimize" . . . "the voting strength" of the Ghetto Area and the said evidence presented regarding the Ghetto Area vis-a-vis the White Suburbanite Belt in Marion County, Indiana demonstrated that the said multi-member districts "operate to . . . cancel out the voting strength" of the Ghetto Area echoing the guidelines uttered in *Fortson v. Dorsey,* 397 U.S. 433, 85 S. Ct. 498, 13 L.Ed.2d 401, 405 [1965] and in *Burns v. Richardson,* 384 U.S. 73, 86 S.Ct. 1286, 1294, 16 L.Ed.2d 376. No other conclusion could have been reached by the lower court in view of the foregoing, uncontradicted and admitted evidence. The said evidence was supplemented by the uncontradicted testimony of plaintiff-appellee Patrick Chavis [App. 176-200] to the effect that the above-described socio-economic characteristics of the Ghetto Area caused its voters to have the particular substantive legislative interests outlined and alleged in memorandum seven to the complaint in this cause. [App. 41, 42] At no point in the proceedings in the lower court did the appellants allege, contend or even suggest that a Ghetto Area of the type alleged did not in fact exist in Marion County, Indiana. For these reasons it did not constitute circular reasoning and it did not constitute an unsupported assumption for the lower court to begin with the fact of Ghetto Area in Marion County in the reasoning set forth in its opinion.

II

The One-Man-One-Vote Principle Requires Uniform Legislative Districts

It is the belief of the appellees that the "Uniform Districting" question presents the most important aspect of this case. The lower court suggested but did not flatly rule in its original decision that a fulfillment of the one-man-one-vote Constitutional mandate would require uniform legislative districts. Then, when forced to draft a court-drawn reapportionment plan, the lower court mandated a plan which provided uniform districts in the form of single-member districts. Although the record in this cause does not contain an outright ruling that it is not sufficient for legislative districts to contain the same ratio of citizens or voters per legislator, the appellees will deal with this question as if there had been such an outright ruling in the lower court. The lower court's rulings did fall barely short of constituting such a mandate.

The notion that one man one vote requirements are fulfilled where the same number [X] results from the following mathematical study of legislative districts—

$$\frac{\text{Number of People In District}}{\text{Number of Legislative Seats In District}} = X$$

is a commonplace notion. But the notion is demonstrably refuted when the study by John Banzhaff which was first published at 75 *Yale Law Journal* 1319, attested to by Mr. Banzhaff in the lower court [App. 139-155] and admitted to in the requests for admissions [App. 112-115] is considered.

There is no basis for contending that ten citizens represented by one legislator would have a voice equal to that of one hundred citizens represented by ten legislators. The value of a voting franchise must be regarded as proportionate to the potential which the vote has to change the result of an election. To ignore this criterion would constitute regarding the exercise of a voting franchise as a hollow ritual. When the said criterion is considered there is an obvious difference between the vote of ten citizens who elect one legislator and that of one hundred citizens who elect ten legislators.

In a head-on race between two candidates or in a yes-no ballot on a pending measure in a legislature the number of possible vote combinations is equal to the number two multiplied by itself the number of times that there are voters. In a district containing ten citizen-voters the number of possible voting combinations is two to the tenth power. In a district containing one hundred citizen-voters the number of possible voting combinations is two to the one hundredth power and, given the fact of ten legislative races, this large number must be multiplied once more by ten. As the number of voters in a hypothetical district increases the number of possible voting combinations increases on a rapidly accelerating geometric curve. But what increases even more rapidly is the number of voting combinations wherein the result could be effected by a shift of only one vote. This fact is demonstrated by admitted request for admission No. 118. [App. 112] From a purely mathematical standpoint this must be considered as the measure of the value of a vote and a vote cast in a bloc-district [multi-member district] which is large in size must be regarded as having greater mathematical potential than a vote cast in a smaller bloc-district or in a single-member district.

The obvious question which the foregoing presentation gives rise to is that of whether the fact that a voter in a large multi-member district has a greater mathematical chance to cast a crucial vote has any practical significance. A large amount of evidence was presented in the lower court demonstrating that multi-member districts of differing size cause voting inequities and dilutions in practice as well as in theory.

The strongest evidence presented on the matter of [non-minority-group] inequities resulting from Marion County, Indiana's fifteen member and eight member multi-member legislative districts came from the testimony of the appellant, Whitcomb's own expert witness who testified that it is a "significant advantage . . . for Marion County to go to the legislature with a single vote of fifteen representatives." [App. 319] The appellant, Whitcomb's expert, of course, based his conclusion upon a tacit assumption that the individual representatives and senators from Marion County vote on legislation with a "single voice." The evidence presented by the plaintiff-appellees repeatedly demonstrated that this assumption was correct.

A former county chairman for one of the major political parties who also was a former Indiana General Assemblyman testified that he was elected as an assemblyman only because his party organization supported him [App. 207] and he was defeated when not so supported [App. 208] and that he knew of no one who had been elected or re-elected within his memory who had not been supported by the party organization [App. 209] and that he always voted at his party's call when in the General Assembly [App. 207] and that he supervised a Marion County General Assembly delegation working with his successor county chairman and there were no renegade votes or acts by any member of the Marion County delegation during that General Assembly session. [App. 210].

Another former general assemblyman testified that he was nominated and elected from Marion County solely because he had the support of the county chairman who previously had testified [App. 218]. He testified that his nomination was accomplished because all of the precinct committeemen in the county handed the voters "slates" containing his name when they voted in the primary and that his name was on this slate because the precinct committeemen voted for him at a "slating convention" and he received their vote at that convention because his name was on a list which the county chairman had passed to the committeemen as they voted at the convention. [App. 218] This former assemblyman further testified that he consulted with his county chairman almost every day during the General Assembly's session [App. 219] and that he always voted pursuant to the requests of his county chairman [App. 220] even to the point where he once sponsored a bill without reading it sufficiently to know that it was inimical to the interests of a municipal client represented by his law office with the result that he encountered the embarrassing situation of voting against his "own" bill which passed anyway. [App. 221]

A former general Assembly candidate testified that he had twice ran in the primary for the General Assembly and had been nominated when slated and had been not nominated when not slated and that there was a very substantial difference between the vote he received when slated and when not slated [App. 227]. Still, another former General Assembly candidate, [who also was the only prevailing Marion County plaintiff in this cause] testified that he was slated and nominated as a candidate to the General Assembly after he was recruited as a candidate in a phone call from the county chairman. [App. 229-230]

A witness connected with the League of Women Voters testified that the current General Assembly delegation was questioned in detail on a number of issues during the campaign which led to their election and they submitted a team answer on every point. [App. 169-173] These assemblymen included three negroes who, after being elected to the General Assembly [despite a three to one vote against them favoring their losing white opponents in the Ghetto Area —See Admitted Request For Admission No. 66, App. 104] followed the vote of their party even on bills which obviously would have an invidious effect upon black voting rights. [See Exhibits 17 through 24] These bills included an act to cause the Marion County Council to be multi-member districted at large where it previously had been elected from single-member districts, a bill which, among other things, would cause the Mayor of Indianapolis to be elected from the entire county without any change in tax districts causing black people to become only 16% of the Mayor's constituency instead of 24%[5] and a bill permitting an all-white part of Gary, to secede from Gary as a response to the recent election of a black man [Mayor Richard Hatcher] as Mayor of Gary, Indiana.[6]

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[5] This statute subsequently was declared unconstitutional in part in three respects because it constituted a black voting rights violation. The decision was rendered by Judge William E. Steckler, one of the three judges who rendered the lower court's decision herein and no appeal was taken from Judge Steckler's decision because the said black voting rights violations were acknowledged.

It was thus demonstrated that Marion County's multi-member district legislative delegations vote *en bloc* in the legislature and "speak with one voice" and that Banzhaff's mathematical study is no mere "ivory tower" exercise. The present legislative apportionment plan in Indiana permits Marion County, Indiana voters to participate in the election of more legislators than any other voter or group of voters in Indiana has the opportunity to select. This delegation which is elected by Marion County voters is sufficient in size to have a disproportionate effect upon the prospects of all pending legislation since it has, as a matter of course, a far greater likelihood that its "one voice" decisions will create a bandwagon effect propelling a prospective bill through the legislative processes or an ultimate effect of passing a bill which is the subject of a split-decision at a final roll call. This is not to say that the multi-member districts of differing size which exist in Indiana provide the actual Marion County voter with any cognizable advantage. The evidence summarized immediately above and other evidence summarized elsewhere in this brief demonstrates that the power which accrues to Marion County as a result of its multi-member-bloc accrues only to its political bosses and not to its people because the ethnic and socio-economic bloc votes of its citizens which largely dominate the county-wide vote effectively cancel each other out. The voting-power disadvantages which Marion County citizens suffer as a result of multi-member districting and the mathematical advantages which the county as a whole "enjoys" as a result of such districting do not offset each other. The invidious effects which result from the said

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[6] This bill never became law only because it was stolen from a stack of bills being transmitted to the office of the Governor of Indiana for signing.

"advantages" and disadvantages are cumulative. Multi-member legislative districts of differing size give power to certain political machines and deny the rights of voters within the entire voting system.

On the basis of the above-described evidence and on the basis of additional evidence which was presented at the trial but which has not been summarized herein the lower court arrived at the following conclusion:

> Much has been said, before and during the trial of this case, concerning the 'critical vote' analysis of Banzhaf, *Multi-Member Electoral Districts — Do They Violate the 'One Man, One Vote' Principle,* 75 Yale L.J. 1309, esp. 13 19-24 [1966]. Cf. *Kilgarin v. Hill,* 386 U.S. 120, 125 n. 3 [1967]. This analysis purports to show that where district A elects one representative from two candidates and District B, which is eight times as populas as District A, elects eight representatives from sixteen candidates, voters in District B cast more 'critical votes' i.e. break a theoretical tie, than voters in District A. We take a similar and simpler view of the situation than is presented in the cited article. Applying the analysis for example to the facts in this case, voters in Johnson and Bartholomew Counties, a single-member senatorial district, choose between two senatorial candidates while voters in Marion County choose between sixteen candidates for eight Senate seats. It is clear that each voter in Marion County has a greater theoretical opportunity to cast a critical vote or deciding vote in any legislative election under the present districting scheme.

John Banzhaf, Associate Professor of Law at George Washington University, testified that when the representatives of a multi-member district vote as a bloc in a legislative body, each representative's vote has a greater weight that that of a representative from a single-member district. Having found that the Marion County elected delegations usually

> do vote in blocks, we believe that the testimony has application here. (App. 377, 378)

This finding and conclusion by the lower court was very substantially supported by the evidence.

In addition to those noted by the lower court the appellees presented other reasons why Indiana's multi-member districts of varying size constitute a one-man-one-vote violation. The appellees showed in their complaint [App. 76, 77 & 80] with help from admitted requests for admissions 85—92 [App. 107, 108] that there are 36 sparsely populated, single-member districted counties in Southern Indiana with an area about 30.7 times that of Marion County, Indiana. It was further shown that the typical [median] party victory of one major party over the other in these 36 counties in the last election involved a margin of only 5.91% while the typical party victory of one major party over the other in each of the forty voting wards in Marion County in the last preceding election involved a voter margin of 30.30%. Thus there was a near two-to-one victory of one major party over the other [with 13 of the wards heavily favoring the losing party and 12 of the wards heavily favoring the winning party] in the forty voting wards of Marion County while nothing approaching such a result obtained in the 36 southern rural counties of Indiana which contained a population approximately equal to that of Marion County. While there could be a rational basis for multi-member-districting the said rural portion of Indiana with its homogenous voter instincts there could not be a rational basis for creating a multi-member-district bloc out of the highly heterogenous metropolitan area in Marion County. Yet this is what has taken place and the said multi-member districting, when viewed in the light of certain recent decisions of this Court, presents a probable Constitutional crisis which should be resolved before the legislatures of most of the states meet in early 1971 to reapportion themselves.

Recent decisions of this Court have eliminated traditional political subdivisions as a basis for curtailing the quest for mathematical perfection in achieving one-man-one-vote among legislative districts. At least one such decision has contained a concerned warning by a Justice of this Court to the effect that the elimination of traditional geographic sub-divisions as a consideration causes the one-man-one-vote mandate of this Court to become a plausible tool for gross political gerrymandering. This Court, in the past, has disregarded potential or actual gerrymandering between the two major political parties in this country, probably because neither of them represent cognizable ethnic or socio-economic interest groups and because both of them, to a substantial extent, represent a cross-section of citizens and voters as a whole. Notwithstanding this fact, the prospect of wholesale legislative reapportionments following the coming United States Census under this Court's current guidelines presents a very significant problem.

While the thirty six counties whose recent voting records are set forth at [App. 80] could be apportioned in almost any manner without having any significant effect upon the voting rights of the citizens therein, these rural counties undoubtedly have socio-economic if not ethnic enclaves. But these enclaves [in view of the voting patterns and small voting population of these counties] necessarily must be so small as to be so insignificant from a political cartographer's standpoint in the case of legislative districts which must be equal to one percent of the entire state, that neither political nor socio-economic nor ethnic gerrymandering can take place. Quite to the contrary, the Marion County Metropolitan Area presents a great potential for such gerrymandering [as do all of the other metropolitan areas in the state]. This is so, however, only if districts of different size are permitted. For example, if all of the wards except 1, 3, 4, 5, 6, 7, 11, 12 and 23 of those shown in the table at App. 76-77 were made into one multi-member district in Marion County and if the abstracted wards were made into another, smaller multi-member district, the political identity of legislators from Marion County would become permanently fixed, for all practical purposes, absent a massive political realignment of the type that normally takes many years. In a like manner the political propensities of the citizens in metropolitan areas could be played upon throughout the state by the party in control at the time of reapportionment to an extent that was unknown when county lines constituted an inhibiting factor. There is an obvious need for a new inhibiting factor which will be consistent with the dictates of *Kirkpatrick v. Preisler,* 394 U.S. 526 [1969] and *Wells v. Rockefeller,* 394 U.S. 542 [1969]. A uniform districts requirement would provide such a factor in addition to rectifying the one-man-one-vote violation inherent in multi-member districts of different size which heretofore has been demonstrated.

III

The Other Matters Raised By The Appellants Are Of No Substantial Significance

Certain other matters raised by the appellants deserve some mention in this brief, but only because they have been raised. These matters are either moot or they are based on assertions which are manifestly false.

A

The Lower Court's Decison And Judgment Were Not Expressly Designed To Freeze In Place The Geographical And Political Integrity Of A Cognizable Racial Minority Group Found To Reside Within The Center Township Ghetto Area For The Sole Purpose Of Preserving Its Voting Strength" As The Appellant Whitcomb Claims

In its initial opinion the lower court made it very clear that it would not accept any racism-in-reverse-gerrymandering-in-reverse reapportionment which would bear the earmarks of an attempt to create "black legislative seats" as such:

> "In this regard, the Court in no way intends to intimate by this opinion that the Negroes residing in the Center Township Ghetto are entitled to a certain number of legislators. Legislative districts are to be drawn with an eye that is color-blind;" (App. 377)

In a manner entirely consistent with this pronouncement the lower court, after the State of Indiana refused to reapportion its legislature, mandated a reapportionment plan which in no way made the Ghetto Area a world unto itself. The districts drawn in Marion County consist of squares and rectangles made up of census tracts and census blocks and they form a grid which almost entirely disregards the boundaries of the Ghetto Area. [See Appendix A, Pg. 15, Motion To Dismiss or Affirm And, In The Alternative, Emergency Motion To Advance Case And To Set Early Dates For Filing Of Briefs]. A plan calculated to enhance the voting power of the Ghetto Area would differ considerably from the plan adopted. Such a plan would have no districts entirely within the Ghetto Area because having a minority of non-ghetto voters in each district would increase the total number of districts which the ghetto area voters could control. Such a plan likewise would have no districts in which the Ghetto Area provided a minority portion of such districts because, from a political cartographer's viewpoint, minority votes in a district are wasted votes. The Court drawn districts include five which include parts of the Ghetto Area. Two of these are almost entirely Ghetto while the remaining three consist mostly of non Ghetto Areas. No political cartographer intending to create a Ghetto voting power bloc would have drawn the district in this manner. There is absolutely no factual basis for the appellant Whitcomb's claim that the districts drawn by the lower court were designed to enhance the voting power of the Ghetto Area.[7]

The appellant Whitcomb's claim that the lower court's districting plan is calculated to "preserve the political voting strength" of the Ghetto Area is entirely spurious. All of the evidence in the lower court was to the effect that the Ghetto Area had no voting power notwithstanding its tendancy to bloc vote and there was no suggestion to the contrary by any of the parties. The only positive effect which the lower court's action has had upon the voting power of the Ghetto Area results solely from the inevitable effect of impartially drawn single-member districts.

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[7] Although this Court stayed the lower court's order implementing its district plan one of the major political parties in Marion County held district "mini-slating conventions" for purposes of determining its legislative candidates. All of the slated candidates were subsequently nominated in the primary. Black candidates filed in the slating conventions in six of the fifteen Marion County "districts" including the five which contain parts of the ghetto area. Only two black candidates were slated and nominated including one in the district which contains only a very small part of the ghetto area where the black candidate overwhelmingly defeated the white candidate in a head-on race notwithstanding a very substantial white voting majority. In a district that was almost entirely ghetto a white candidate won almost all of the vote in a head-on race against a black candidate who campaigned primarily on the basis of skin-color. All five of the candidates in the "ghetto districts," however, avowed a substantial commitment to the substantive interests of black people and the poor.

B

The Existing Apportionment Plan Declared Invalid By The Lower Court Contained Deviations From The Ideal Which Were Greater Than Any Ever Approved By This Court And The Fact That It Previously Had Been "Approved" By A Three-Judge Federal Panel "Without Prejudice" To Further Attacks Is Of No Legal Significance

The Lower court made the following findings of fact which are undisputed:

> The ratio between the largest and the smallest district according to the 1960 figures is 1.327 to 1. The deviation from the ideal population per senator is greater than 14%, in one district, is greater than 13% in one more district, and is greater than 10% in still five other districts'' (App. 370)

> "The ratio between the largest and the smallest district, according to the 1960 figures is 1.279 to 1. The deviation from the ideal population per representative according to the 1960 population figures is greater than 13% in one district, is greater than 11% in one more district, and is greater than 10% in still three more districts." (App. 371)

The context of the above-given facts the lower court was faced with the duty of implementing the following mandate of this Court in *Kirkpatrick v. Preisler,* 394 U.S. 526, (1969).

> "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes." *Kirkpatrick v Preisler,* supra at U.S. 531.

The deviations existing in this case were far greater than those which had been found in *Kirkpatrick v. Preisler* and they were greater even than those which Justice White had characterized as tolerable in his dissent to the *Kirkpatrick v. Preisler* decision.

The apportionment plan which the lower court found to be unconstitutional had been approved by a different three-judge panel in the lower court, *Stout v. Bottorff*, 249 F.Supp. 488 [D.C. Ind. 1965] in a decision from which no appeal was taken. But in this earlier decision the district court in no way expressed itself as contemplating that its judgement was absolute and final. In fact the *Stout v. Bottorff* decision specifically states that it was rendered without prejudice to subsequent attacks upon the multi-member districting feature of the plan being approved. This case constituted just such an attack.

Moreover, the apportionment plan approved in *Stout v. Bottorff*, was decided shortly after *Reynolds v. Sims*, 377 U.S. 633 [1964] and long before the refinement to guidelines had taken place in cases such as *Swann v. Adams*, 385 U.S. 440 [1967]; *Sincock v. Gately*, 262 F. Supp. 739 [D.C. Del. 1967] and *Long v. Docking*, 283 F. Supp. 539 [D.C. Kan. 1968].

C

The Implementation Of One-Man-One-Vote Requirements May Not Be Postponed Merely Because The End Of A Decade And A New Census Is Approaching

The appellant, Whitcomb, on pages 38 through 43 of his brief, urges that the lower court should have awaited the taking of the 1970 census before ordering a reapportionment of the Indiana General Assembly. The appellant endeavors to bolster this assertion by claiming that the 1960 census figures had become "outdated."

None of the appellant's figures which indicate deviations between the 1960 census results and the actual population in the suburban metropolitan areas of the state were presented at the trial of this cause. They were presented, rather, in unverified pleadings submitted after the State of Indiana had been given sixty days to reapportion itself and after the lower court had been forced by the State's inaction to undertake a court-drawn reapportionment plan.

Notwithstanding the aforesaid defects in the appellant, Whitcomb's presentation the appellees will conceed that the 1960 census contained population figures which substantially deviated from the actual population of the suburban areas surrounding the large metropolitan areas of the state as of the time of trial. This is a fact which would be obvious to anyone traveling through the State of Indiana and it probably is true of every metropolitan area in the United States.

The build-up of suburban communities, however, does not present a valid basis for delaying the implementation of one-man-one-vote requirements. Newly constructed suburban areas are voluntarily occupied by citizens who inevitably suffer a dearth or shortage of many types of governmental services during the first few years of occupancy. There is no possible legal significance to the fact that a citizen's moving into a suburban area between censuses will cause he and his fellow suburbanites to suffer a vote dilution until the next census is performed. This is particularly true in view of the fact that same dilution will take place regardless of when the reapportionment is performed, either early or late in the decade.

The United States Census is the only existing reliable basis for state-wide reapportionments and it is the tool for reapportionments which was specifically provided for by the Constitution of the United States. Although it is a set of statistics which, like any other set of statistics, can become outdated, the Constitutional provision which requires a census every ten years presents a sufficient safeguard to prevent any substantial one-man-one-vote voting-rights deprivations. The use of other demographic sources in the conducting of reapportionments and rulings that reapportionments should await the taking of a census would add a substantial degree of arbitrariness to reapportionment decisions. An end to repeated reapportionment litigation can be accomplished only if the guidelines are simple and contain no exceptions.

The appellant, Whitcomb cites cases in which other courts decided to forego a reapportionment until new census statistics are available. In view of the stay which has been issued by this Court in this case that is essentially what has happened here because 1970 census statistics will be available before the next Indiana General Assembly primary takes place. For this reason the question of timeliness that is presented in this case is a moot question for all practical purposes. To the extent that this Court may consider that question, however, the appellees urge that no basis for any delay in reapportionment matters should be given recognition. This would be akin to the ill-fated "all deliberate speed" guidelines which this Court previously adopted in another civil rights area.

D

The Absence Of Proof That The Multi-Member Districting Of Marion County Was Intended To Dilute The Vote Of Minority Groups Is Of No Significance.

The evidence showed that no county in Indiana during the one hundred thirty years of its history ever has been sub-divided for purposes of creating smaller legislative districts.[8] Because this policy pre-dated the existence of metropolitan areas and racial and ethnic enclaves of substantial size there was no basis for asserting that the legislative districts in Indiana were designed to dilute the vote of minorities. In both *Fortson v. Dorsey,* 397 U.S. 433 [1965] and *Burns v. Richardson,* 384 U.S. 73 [1966] this court stated that multi-member legislative districts are illegal if they "operate to minimize or cancel out the voting strength of racial or political elements of the voting population" either "designedly or otherwise." Appellees believe that this guideline is manifestly correct because the intent behind a massive voting rights dilution can have no relevance to the problems caused by the invidious harm that is brought about by such a dilution.

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[8] This is not to say that Indiana has no history of voting apportionments intentionally devised to dilute the vote of racial and ethnic minorities. Indiana has a very extensive history of such invidious apportionments as shown by the following quoted footnote in a decision in a case related to this one wherein one of the judges of the lower court found a local apportionment statute enacted by the present legislature to constitute a black voting rights violation on three counts. "The original councilmanic district ordinance under the present Indiana Constitution was enacted in 1852 and provided that all city councils should be elected from fifteen single-member districts at annual elections. [Acts 1852, vol. 1, pg. 205.] Then in 1855 a local election was conducted in Indianapolis under fear of rioting by foreign-born Germans [Indianapolis Journal, April 25, 1855, pg. 1] and the results of the election were lamented in the local press because "the Dutch bunch" elected three representatives to the fifteen single member district council. [Indianapolis Journal, May 2, 1855, pg. 3.] At the next session of the General Assembly a new statute was enacted providing for the organization of cities which permitted a city to be divided into as few as three councilmanic districts with two councilmen to be chosen from each district at biennial elections for staggered terms of four years thus diminishing the probability of minority bloc influence. [Acts 1857, pg. 44, secs. 8 and 9.] By 1880 the foreign born constituted slightly more than twenty percent of the population of Indianapolis [these and subsequent similar figures are from appropriate U.S. Census] and in 1881 the General Assembly enacted a city council statute applicable only to Indianapolis creating an additional councilmanic house of aldermen to be elected from districts three times as large as those from which the regular councilmen were to be elected. [Acts 1881, pg. 14.] By 1890 persons of Germanic descent included about 27% of the City of Indianapolis and the following year the General Assembly amended the Indianapolis city council statute eliminating the Board of Aldermen and adding six members to the Council itself to be elected at large. [Acts 1890, pp. 140, 141.] Then, in 1909 the Indianapolis or "First Class City" councilmanic statute was again amended to provide that all members of the council would be elected at large [Acts 1909, pg. 341]. The bill was introduced by a sponsor who stated that the intendment of the act was that "only the better class of men would be chosen" to serve. [Indianapolis News, February 5, 1909, pg. 2, col. 2.] Whatever trend can be discerned from these historical facts must be regarded as largely reversed by the single-member districting feature of the questioned statute. These facts do demonstrate, however, that the problem judicially noted in *Gomillion v. Lightfoot,* 364 U.S. 399 [1960], is neither new nor confined to the emerging negro voting minority and it is one which will probably persist as long as communities continue to be divided into socioeconomic and ethnic enclaves." *Bryant v. Whitcomb,* — F.Supp. — (D.C. Ind. 1970).

E

Whether The Appellant Whitcomb Was Entitled To Have County Lines Retained As The Sole Basis For Dividing Districts

On pages 46 through 49 of his brief the appellant, Whitcomb argues that county lines should not have been crossed in drawing senate districts for the Indiana General Assembly because the Indiana Constitution prohibits it.

It is arguable whether the Indiana Constitution prohibits the crossing of county lines for the purpose of creating single member senate districts. The Indiana Constitution merely provides that no county "shall ever be divided" for purposes of creating senate districts in a provision which, at the same time, provides that districts consisting of more than one county shall consist of contiguous counties. It is entirely plausable to assert that this provision relates only to multi-county districts and that it was not drafted in contemplation of anything resembling the problem at hand. No Indiana Court ever has interpreted the Constitutional provision in question in a manner that is pertinent here.

It also is arguable, however, that the appellant, Whitcomb's interpretation of the Indiana Constitutional provision in question is entirely correct. Conceeding arguendo that his interpretation is correct it remains to be seen whether the integrity of county lines can provide a justification for one-man-one-vote deviations in Indiana within the guidelines set by this Court.

In final arguments at the trial in the lower court it was asserted by the appellees that the apportionment plan under attack represented the best that could be done from the one-man-one-vote standpoint and this assertion was in no way contradicted by the appellants at that time or since that time. Given the fact that the plan contains deviations of well over fifteen percent, it necessarily follows that the disregarding of some county lines was imperative.

In this connection the lower court made every reasonable effort to uphold the Indiana Constitution in its drawing of an apportionment plan for Indiana:

> "Persons desiring to submit plans were ordered to file notice of their intent to do so on or before October 24, 1969. The Court announced that 1960 census data would be used as a basis for redistricting; that single-member districts would be preferred to multi-member districts; and that county and township boundary lines would be crossed in drawing district lines wherever necessary to achieve equality of population in the districts but that the Court would strive to preserve the integrity of county and township lines." (App. 392)

Under the Supremacy Clause of the United States Constitution the lower court could have done no more than it did.

CONCLUSION

There was a sound evidentiary basis for the lower court to conclude that the guidelines set forth in *Fortson v. Dorsey,* 397 U.S. 433 (1965) and *Burns v. Richardson,* 384 U.S. 73 (1966) required the sub-division of the multi-member legislative districts in Marion County, Indiana and the other existing one-man-one-vote mandates of this Court required the lower court to take action to alleviate the mal-apportionment of the conventional type which readily was apparent in the light of all available population statistics. None of the existing guidelines to be found in the past decisions of this Court provided any basis for ignoring this mal-apportionment because of the nearness of the 1970 Census or because of the population shifts which had taken place since the 1960 Census.

The only action by the lower court which was not firmly supported by the existing guidelines of this Court was its suggestion that the Indiana General Assembly should consider the principle of uniform districting in conducting its apportionment and its following of its own suggestion when the inaction of the State of Indiana forced it to draw its own apportionment plan. While this action by the lower court was not pursuant to prior guidelines set by this Court it was in no way inconsistent with such guidelines and it too had a firm evidentiary basis.

More important, perhaps, than the reasons heretofore given supporting the thesis that uniform districting is Constitutionally required under the facts apparent in this case is the further fact that requiring such districting will have the additional effect of providing an unmistakable guideline by which reapportionment issues arising out of the existence of ethnic enclaves will be effectively eliminated from one-man-one-vote litigation in all instances where the uniform districts are kept reasonably small (a likely result in all of the states because of the obvious practical hardships which very large uniform districts would work upon rural areas). Such districts also would have the heretofore mentioned advantages of rendering partisan gerrymandering almost impossible and of rendering the guidelines expressed in *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969) and *Wells v. Rockefeller*, 394 U.S. 542 (1969) entirely workable. The "strict" guidelines in *Kirkpatrick* and *Wells* are and will remain unworkable absent continued court litigation so long as endless varieties of multi-member districts of varying sizes are available to apportioning legislatures and comparisons between contesting plans remain difficult if not impossible.[9] All of the actions taken by the lower court conform to the existing guidelines of this Court and the further action required to implement those guidelines.

WHEREFORE, Appellees pray that the actions of the trial court be approved in all respects and affirmed in all aspects not already effectively reversed by the stay order issued herein.

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[9] For example, the inclusion of an entire state in one multi-member district inevitably would result in the "best" possible plan and this would be so regardless of what population statistics were used or however outdated such statistics might be or become. No other proposed apportionment plan possibly could compete with such a plan under naive one-man-one-vote criteria. Such a plan also would avoid the problem of crossing county lines and this problem as well as population discrepancy problems will tend to manifest themselves and increase as districts become smaller. Thus *Wells* and *Kirkpatrick* will militate against the drawing of small districts calculated to achieve minority representation and plans featuring large, sprawling districts inevitably will be favored notwithstanding the greater potential for gerrymandering of all types in the drawing of such districts. Absent a uniform districting requirement and a policy favoring small districts a substantial amount of reapportionment litigation will be present throughout the coming decade and stability in apportionment matters will not be achieved.

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In The

Supreme Court of the United States

October Term, 1969

No. 1198

EDGAR D. WHITCOMB, Governor of the State
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Appellant,

v.

PATRICK CHAVIS, *et al.*,
Appellees.

On Appeal From The United States District Court
For The Southern District of Indiana,
Indianapolis Division

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The ACLU Foundation, Inc., Alabama Civil Liberties Union, and the Alabama Independent Democratic Party move the Court for leave to file the attached Amicus Curiae Brief.

The case raises issues with respect to the right of Negroes to be represented effectively in state legislatures, and the degree of proof that must be developed to establish that a multi-member legislative district results in the minimization or cancelling out of the voting strength of predominately Negro areas in metropolitan counties throughout the United States.

Movants desire to discuss facts and questions of law relevant to this issue of vital concern to black citizens in urban areas. Movants or their attorneys are involved in similar litigation in Alabama, *Nixon v. Brewer*, No. 3017-N (M.D. Ala., order postponing relief entered March 4, 1970). Movants believe that their discussion, based on experience in similar pending litigation, will assist in arriving at a correct result on this issue of importance to all urban areas. Movants believe that the discussion in the attached brief will present considerations not advanced by the parties.

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AMICUS CURIAE BRIEF

INTEREST OF THE AMICUS CURIAE

This brief is submitted on behalf of the ACLU Foundation, Inc., the Alabama Civil Liberties Union, and the Alabama Independent Democratic Party.

The ACLU Foundation, Inc. (a charitable and educational foundation affiliated with but separate from the American Civil Liberties Union) and the Alabama Civil Liberties Union (a state affiliate of the American Civil Liberties Union), have provided counsel to plaintiffs in *Nixon v. Brewer*, No. 3017-N (M.D. Ala. filed January 13, 1970), now pending before a three-judge court. These amici have been active in securing the benefits of the one-man one-vote principle and in securing for Negro citizens the benefits of the thirteenth, fourteenth, and fifteenth amendments.

The Alabama Independent Democratic Party, an incorporated political party composed of both black and white citizens of Alabama, is an intervening plaintiff in *Nixon*.

As shown by the Opinion entered on plaintiffs' Motion for Preliminary Injunction in the *Nixon* case (appended to this brief at 1a), the plaintiffs there seek an order requiring the election of both Senators and Representatives in the legislature of Alabama from the three most populous counties in the states — Montgomery, Mobile, and Jefferson — from single-member districts. The plaintiffs maintain that the election of Senators and Representatives from these counties on a county-wide basis minimizes or cancels the voting strength of Negro citizens residing in the predominately Negro areas in these counties. This deprives them of the equal protection of the law guaranteed by the fourteenth amendment, and debases their vote for legislators in violation of the fifteenth amendment.

About 40 percent of the black citizens of Alabama reside in these three largest counties in Alabama. They comprise 38 percent of the population of Montgomery County, 32 percent of Mobile County, and 35 percent of Jefferson County (including Birmingham). However, no Negro has been elected from any of these counties to either house of Alabama's legislature since Reconstruction. Serious efforts have been made to accomplish such election as recently as the 1970 Democratic primaries, but to no avail. Only the sub-districting of these counties will extend the benefit of the one-man one-vote principle to the more than 386,010 (1960 population) black citizens of these counties and effectuate the fifteenth amendment.

The foundation of *Nixon* is the same as that of *Whitcomb,* although *Whitcomb* presents certain procedural and remedy problems not present in *Nixon.* The decision of this case may be largely determinative of the proof that will be required and the relief ultimately to be granted in Alabama.

STATEMENT OF THE CASE

Amici adopt appellees' statement of the case.

ARGUMENT

A. *Introduction*

The 1970 census of population has been taken. The data is now being processed. Soon the legislatures of the fifty states will be considering apportionment plans based on this data, as partisan apportionment proposals wend their ways through the legislative process. Historically we know that one of the purposes of some of the proposals will be to reduce or eliminate the representation of black voters in our state legislatures. Schemes will be attempted that go as far as it is possible to go and still withstand the attacks expected in the courts under the latest judicial pronouncements. The decision in this case will largely determine the extent of possibility of direct black representation afforded by these apportionment enactments.

Increasingly, the device of at-large elections of representatives from multi-member districts has emerged as the means to deny effective representation to substantial minority groups while appearing to comply with the "one-man, one-vote" edict of *Reynolds v. Sims*, 377 U.S. 533 (1964). The massing of smaller political subdivisions into multi-member districts can reduce population variations in apportionment schemes; but it can also substantially minimize or cancel the votes of minority groups.

The United States Commission on Civil Rights in its report, *Political Participation* (1968) contains a chapter entitled "Diluting the Negro Vote by Switching to At-Large Elections." It is there stated:

> Where Negroes are heavily concentrated in particular election districts, their votes can be diluted effectively by converting to at-large elections, in which their votes are outweighed by white votes in adjoining districts. This technique has been used in Mississippi and Alabama. *Id.* at 21.

When a county with a black majority is merged into a multimember district with counties having white majorities sufficient to cancel out the voting strength of the black majority in the county merged, the unconstitutional effect is easily seen. Such districts were stricken down in *Sims v. Baggett*, 247 F. Supp. 96, 110 (M.D. Ala. 1965) (the remand of *Reynolds v. Sims*). But in the urban county the effect, more subtle, is just as discriminatory where areas with substantial concentration of black voters are merged into county-wide, at-large, multi-member election districts.

In Alabama, for example, according to the 1960 census a black population of over 386,000 was concentrated in the three metropolitan counties of Jefferson, Mobile, and Montgomery. Using pure ratios of population to representation, this number of people would elect twelve members of the Alabama House of Representatives and four members of the Senate. But in each county the black citizens were a minority: Jefferson, 35 percent; Mobile, 32 percent; Montgomery, 38 percent. Each of these counties is a single multi-member district; together they elect 35 of Alabama's 105 Representatives and 12 of the 35 Senators.[1] Instead of electing 12 of these 35 Representatives, the Negro voters — who, like white voters in the South, have established voting patterns — elect none. Instead of electing four of these twelve Senators, they elect none. The voting strength of these black citizens is not only minimized; it is cancelled out.

The fact that dilution of this nature has in fact been permitted to stand in cases such as *Fortson v. Dorsey*, 379 U.S. 433 (1965); *Burnette v. Davis*, 382 U.S. 42 (1965); *Burns v. Richardson*, 384 U.S. 73 (1966); and *Kilgarlin v. Hill*, 386 U.S. 120 (1967), will spawn, we believe, a massive effort, organized and unorganized, to use the multi-member district as a device to prevent, or minimize, the election of black legislators. Only a clear and affirmative decision by this court can permit the 1970's to be a decade in which black citizens of America are admitted to "the essence of a democratic society . . . [and] the heart of representative government," *Reynolds v. Sims*, 377 U.S. 533, 535 (1964). This is the opportunity they must have if they are to participate in, and work within, our democratic system. For over a century black citizens in many areas of our country have had to turn repeatedly to the federal courts and the Congress to secure and

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[1] The county figures are:

	Representatives	*Senators*	*Total*
Jefferson	20	7	27
Mobile	10	3	13
Montgomery	5	2	7
	35	12	47

protect their rights. Direct state legislative representation is essential for providing them an effective voice and a fair hearing in state governments which make and administer by far the largest number of the laws under which they live.

We believe that the opportunity for direct representation of black voters by selection of legislators of their own choosing in the state legislatures is essential to help America put behind it the racial tensions which surfaced throughout the nation, North and South, East and West, in the sixties. Only by the practical requirement that legislative apportionment be on a single-member district basis with districts composed so as to prevent the cancelling out or minimization of the voting strength of black voters, can the system be made to work effectively for the black citizens of America — and for the other geographically cohesive racial, economic, and political minority elements of our cities and states.

The record in this case illustrates the way multi-member districts result in an effective racial gerrymander in a northern metropolitan county. But it should be emphasized that the facts of this record are not as extreme as those in Alabama. The Center Township ghetto in Marion County, Indiana, has had only 4.75 percent of the county's Senators and only 5.97 percent of the county's Representatives, although this predominately black area has 17.81 percent of the county's population. But in Alabama, the ghettoes of Jefferson, Mobile, and Montgomery Counties, with their thirty to forty percent of the Counties' residents, have had, by the same yardstick, *zero* percent of the legislators. The Court should strike down the Indiana racial gerrymander by upholding the decision of the District Court requiring the subdivision of Marion County, Indiana, into single-member districts. This affirmance should implement two separate Constitutional protections:

1) Wherever a racial minority is shown to reside in a cognizable area within a political subdivision in sufficient numbers to entitle them to elect one or more members of their state legislature, the fourteenth and fifteenth amendments require that legislators from the subdivision be elected from single-member districts drawn so as not to minimize or cancel out the voting strength of such racial minority.

2) Because of the tendency of people of similar racial, economic, and political characteristics to live or be forced to live in concentrated areas, the use of multi-member districts for the election of members of legislative bodies is *prima facie* in violation of the equal protection and due process clauses of the fourteenth amendment so that, in such circumstances, the burden would fall to the state to establish that each multi-member district does not result in the minimization or cancelling out of the voting strength of any racial, economic, or political element within the district.

Such a holding is essential to guarantee a meaningful right to vote and equal protection of the laws to black citizens of this nation at this point of time in our history. It is likewise essential to provide other minority political elements of our states a fair chance to be heard in, and to participate in, the legislative process. No state legislature can be expected to solve effectively many of our most serious problems if substantial minorities are effectively denied representation in them.

Just as the establishment of the one-man one-vote principle was essential to the giving of fair voice in state democratic processes to those who are a part of a population majority, we believe that the requirement of fairly drawn single-member districts is equally essential to providing the opportunity for democratic expression by those citizens who are a part of a racial minority, be it a black minority in an area with a white majority, or a white minority in an area with a black majority.

B. *Multi-member Districts Are Invalid Where The Voting Strength Of A Racial Or Political Element Is Minimized Or Cancelled Out*

Although it refused to affirm the lower court's order eliminating the use of multi-member districts by the Senate of Georgia as a per se violation of the fourteenth amendment, the Court in *Fortson v. Dorsey*, 379 U.S. 433 (1965), did recognize the potential threat to racial and political minorities by the use of multi-member districts:

> It may well be that designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. The question, however, is not presented by the record before us. 379 U.S. at 439.

The problem was considered again in *Burns v. Richardson*, 384 U.S. 73 (1966), but the Court, relying on *Fortson*, held that the demonstration of invidious discrimination could not be based on "conjecture," 384 U.S. at 88.

The evil is now "demonstrated." "Conjecture" is now proof.

The burden of proof should be met by the showing of the existence, within a definable geographical area, of a cognizable racial or political element of the voting population sufficient in numbers to warrant the apportionment of a member of either house of a state legislature to such area. If a county of 30,000 population would be entitled to elect a legislator, a group of 30,000 members of a racial minority residing in a cognizable area within a large county should be accorded the same apportionment entitlement. If making a multi-member district would minimize or make possible the cancelling out of the voting strength of a cognizable racial minority group, such a multi-member district would be invalid.

The district court here did not rely solely or even principally, on the racial make-up of the Marion County ghetto, although it was clearly a predominately (99.8 percent) black population area, 305 F. Supp. at 1373. It considered the socio-economic factors such as owner-occupied dwellings, crowded dwellings, dilapidated housing, old age assistance recipients, high school graduates, unemployment rates, juvenile delinquency cases, family income, and automobile ownership among its "Critical Differentiating Characteristics." 305 F. Supp. at 1371-99. On the basis of these facts, it determined that a cognizable, predominantly black, cohesive group of citizens inhabited an area of the county which met the criteria for classification as a ghetto area, and, as such, constituted a political element whose voting strength was minimized and rendered ineffective by their submergence in a multi-member district.

The findings of the court are supported by the record and certainly meet the criteria of *Fortson* for proving a cognizable racial or political element whose voting strength is minimized or cancelled out by its inclusion in a multi-member district. It would appear that, given our well-known history of discrimination against Negroes, the mere proof of a substantial Negro population, concentrated within a cognizable area in sufficient numbers to be entitled to two members of the Indiana House of Representatives and one member of the Indiana Senate, should alone meet the requirements of *Fortson* and *Burns*.

The relevance of the district court's "Critical Differentiating Characteristics" is, first, they should establish once and for all that Negroes, whether in the North or South, are victims of social and economic discrimination of the type that could be, but has not been, remedied by state legislatures. They are our "education in the obvious"[2] and should not need to be re-proved for every urban ghetto. Second, use of these factors should be approved for application to *any* geographically cognizable political element without regard to the racial makeup of the area. The proof of either racial concentration *or* other "differentiating factors" should be sufficient to condemn the employment of a multi-member district for the selection of legislators.

The fact that a resident of the minority area had been elected by a majority of all the voters of a multi-member district would not offset such proof because the minority group should be able to elect the man who best speaks for them, whether he be popular with other voters in the larger multi-member district or not. In this case, three Negro representatives were elected to represent Marion County in the Indiana Legislature. None carried the ghetto voting area. All were elected by white voters outside the area.

The only way black voters, as part of a minority, can have an impact on elections is to vote in bloc. If there is a run-off election system, as in Alabama, that vote is as likely to be used to attempt to defeat their candidate as it is to elect him. See Appendix B and C (pp. 9a-11a,

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[2] O. W. Holmes, *Law and the Court*, in *Collected Legal Papers*, 291, 292-93 (1921).

infra) for "Bloc Vote" advertisements used on behalf of George Wallace and a Jefferson County legislative candidate in the June 2, 1970, Democratic Runoff Primary in Alabama. Only in single-member district elections can black voters argue and vote on the issues as other voters can and do. Without single-member districts their exclusion from the "core of our constitutional system"[3] will continue, with all of the manifestations of frustration that such exclusion breeds.

C. *Multi-Member Districts Are Prima Facie Constitutionally Invalid*

This Court appears to have held multi-member districts to be *prima facie* valid in *Burns v. Richardson,* 384 U.S. 73 (1966). Amici maintain that this decision should be reconsidered against the background of subsequent cases and of this record.

Standards in voting cases have changed rapidly in the last decade. See *Castro v. California,* 38 U.S.L.W. 2522 (Cal. Mar. 24, 1970), analyzing the evolution of the equal protection standard from the "rational grounds" for classification in *Lassiter v. Northampton County Election Bd.,* 360 U.S. 54 (1959). The standard began its demise in *Baker v. Carr,* 369 U.S. 186 (1962), came more directly into question when *Carrington v. Rash,* 380 U.S. 89 (1965) for the first time applied the equal protection clause to state voting requirements, was implicitly disapproved in *Harper v. Virginia Board of Elections,* 383 U.S. 663, 670 (1966), and was expressly abolished in *Kramer v. Union Free School District,* 395 U.S. 621, 627-28 (1969), and *Cipriano v. City of Houma,* 395 U.S. 701 (1969). It appears that the multi-member district neither serves a "*compelling*" state interest nor accomplishes any state interest with the "precision" required by *Kramer.*

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[3] *Carrington v. Rash,* 380 U.S. 89, 96 (1965)

Many courts have looked askance at multi-member districts for various reasons. The record and opinion here indicate that the question is ripe for re-examination.

In *Lucas v. Forty-Fourth General Assembly,* 377 U.S. 713, 731 (1964), this Court expressed doubt as to the desirability of multi-member districts when it said, without condemning the constitutional validity of such districts:

> One of the most undesirable features of the existing apportionment scheme was the requirement that, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole. Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome, and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies *within* the populous counties resulted, and the residents of those areas had no single member of the Senate or House elected specifically to represent them. Rather, each legislator elected from a multi-member county represented the county as a whole. (emphasis in original)

In *Drew v. Scranton,* 299 F. Supp. 310, 327 (M.D. Pa.), *vacated,* 379 U.S. 40 (1964), the district court noted:

> It is likewise true we think . . . that the single-member district has important advantages over the multi-member district or election at large in bringing about a better representation of the body of voters. Minority groups living in particular localities may well be submerged in elections at large but can often make their voting power much more effective in the smaller single-member district in which they may live. Moreover, a much more widespread personal contact between the representative and his constituents and knowledge by the representative of the views and desires of the voters is possible in a

> single-member district than in a larger multi-member one where the number of voters is much greater and the responsibility of representation is divided among two or more representatives answerable to the same electorate.

In *Bannister v. Davis*, 263 F. Supp. 202, 209 (E.D. La. 1966) (three-judge court), the court said:

> Multi-member, multi-parish districts will be necessary to satisfy the equal-population standard while adhering to the boundaries of political subdivisions. They should, however, be avoided whenever possible. When parishes are cumulated into a single voting district with more than one senator or representative, the district should be compact and composed of adjoining parishes. If possible, parishes should not be divided between two or more districts, or subdivided to create one or more districts, although such districts may be necessary in very large urban areas.
>
> Even if a plan meets the requirements of the equal population principle, it may be invalid if it goes too far in diluting voting strength. Multi-member, multi-parish districts tend in this direction. Gerrymandering of any kind, therefore, will be closely scrutinized. Racial gerrymandering, which violates the Equal Protection Clause, will not be tolerated.

In *Dorsey v. Fortson*, 228 F. Supp. 259 (N.D. Ga. 1964), *rev'd*, 379 U.S. 433 (1965), the lower court condemned multi-member districts on the basis of inherent dilution or debasement of voting strength:

> Here the dilution or debasement is of the right of some to choose their representative. It is discrimination in another form, but we think it necessarily follows that voters in some senatorial districts cannot be treated differently from voters in other senatorial districts. The statute here is nothing more than a classification of voters in senatorial districts

> on the basis of homesite, to the end that some are allowed to select their representatives while others are not. It is an invidious discrimination tested by any standard. 228 F. Supp. at 263.

The rights of a voter to vote can be debased *en masse* just as effectively as one by one. Multi-member districts accomplish this kind of debasement. The Court now has before it a record showing the debasement and its socio-economic, politically remediable consequences.

The events of the decades prior to the decision in *Baker v. Carr,* 369 U.S. 186 (1962) demonstrated that the dilution of the voting strength of urban voters by rural dominated reapportionment plans resulted in the undermining of state government as the urban voter was pressured to turn more and more to the federal government for redress of grievances and solutions to urban problems.

Events of the past decade show the degree of frustration and the various manifestations of that frustration where a major segment of the population is excluded from meaningful participation in the affairs of local and state government, and can only turn to the federal courts or self-help for redress of their grievances and solutions to their problems. Black citizens need to be included within our system.

The decisions of this Court in *Fortson v. Dorsey* and *Burns v. Richardson* recognize the problem and the violation of our Constitution inherent in a minimization or cancelling out of the voting strength of a cognizable racial or political element in a legislative district by the employment of multi-member districts. The time has come to define a practicable remedy. The remedy provided by the district court is such a remedy. It should be affirmed.

CONCLUSION

The issue is at an impasse similar to that which population apportionment had reached at the time of *Baker v. Carr*, 369 U.S. 186 (1962). For over a century the legislatures of the states have been controlled by white legislators. The device of the at-large election of substantial numbers of legislators from multi-member districts with its inherent effect of submerging, diluting, debasing, and cancelling out all minority groups—racial, economic, and otherwise—will not only continue, it will expand in the months and years immediately ahead if the Court on the one hand recognizes the principle that the minimization or cancelling out of the voting strength of such minorities is constitutionally invalid, but on the other hand rejects proof clearly showing the existence of such elements in sufficient numbers and concentrated in such areas as to entitle them to an opportunity for direct representation if any reasonable system of single-member districts were invoked. See *Davis v. Mann*, 245 F. Supp. 241 (E.D. Va. 1965), *aff'd sub nom. Burnette v. Davis*, 382 U.S. 42 (1965); *Kilgarlin v. Martin*, 252 F. Supp. 404 (S.D. Tex. 1966), *rev'd on other grounds sub nom. Kilgarlin v. Hill*, 386 U.S. 120 (1967). See generally the treatment of the subject in Note 5 Harv. Civil Rights and Civil Liberties L. Rev. 472 (1970).

The submergence of substantial black minorities into multi-member districts presents a clear constitutional violation. There is a definable and demonstrable denial of equal protection of the laws. Lines are drawn to favor arbitrarily and unfairly the white voters of the district whereby the black citizen is merely counted to increase the legislative power of the white voters without any realistic hope of sharing in that power. There is a debasement of the right of black citizens to vote and a limitation of their first amendment rights to band together for political purposes, which is as pervasive and invidious as the restrictions on political parties prohibited by cases such as *Hadnott v. Amos,* 394 U.S. 358 (1969).

Due process requires that there be a remedy. Unless the right of such persons to elect a representative of their choosing, black or white, is prohibited by the requiring of single-member districts, or at least, multi-member districts which do not have the effect of minimizing or cancelling out their voting strength, black voters living in predominantly black areas will continue to be deprived of their right to have effective representation of their own choosing in the state legislatures of this nation. This "foundation of our representative society," *Kramer v. Union Free School District,* 395 U.S. 621, 626 (1969), must not be undermined.

Amici therefore submit that the holding of the district court requiring single-member districts for the Indiana Legislature should be affirmed.

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APPENDIX

APPENDIX A

In The
United States District Court
For The Middle
District of Alabama,
Northern Division

CIVIL ACTION
NO. 3017-N

E. D. Nixon, *et al.*
Plaintiffs,

Alabama Independent Democratic Party,
a corporation,
Plaintiff-Intervenor,

vs.

Albert P. Brewer, *et al.*
Defendants.

ON MOTION OF PLAINTIFFS FOR PRELIMINARY INJUNCTION

and

ON MOTION OF DEFENDANTS FOR DISMISSAL

OPINION

PER CURIAM:

This is a class action filed on behalf of Negro citizens residing in what is called the "predominantly Negro ghetto area" in the three most populous counties of Alabama — Montgomery County, Mobile County and

Jefferson County. The plaintiffs seek a preliminary and permanent injunction against the election of legislators, both Senators and Representatives, from these three counties on a county-at-large basis, because they claim that multi-member districting operates to minimize and cancel out the voting strength of Negroes residing in the predominantly Negro ghettos in said counties to the extent that they are deprived of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States and also in violation of the Fifteenth Amendment. The complaint further seeks a declaration of the unconstitutionality of Section 200 of the Constitution of Alabama requiring that no county be divided to create a legislative district; of the statute providing for the multi-member senatorial districts of the three counties;[1] and of the decree of this Court providing for the multi-member house of representatives districts and approving and adopting the multi-member senatorial districts of the three counties.[2]

All of the plaintiffs to the present action and the classes which they represent are within the broader class bound by the opinion and decree in *Sims v. Baggett*, n. 2, *supra*. That case undertook to completely reapportion the Alabama Legislature, both the House of Representatives and the Senate, effective with the term of office of the new legislative seats therein created to commence on the day after the General Election to be held on November 1966 and to remain in effect until after the next decennial census.[3]

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[1] Title 32, §§ 2 and 2(1) Code of Alabama (recompiled 1958), 1967 Supp.

[2] Sims, et al. v. Baggett, et al., C.A. 1744-N, decided on the 2nd day of October 1965, reported in 247 F.Supp. at pp. 96, *et seq.*

At two places in the opinion it requires that "representation in each House be divided according to county lines and that no county be subdivided to create a legislative district." (247 F.Supp. 103, repeated at 105.) Thus the opinion forbids the kind of redistricting sought by the plaintiffs.

Insofar as the complaint attacks the reapportionment or redistricting for the period covered by the opinion and decree of this Court, the complaint must be treated as an independent action seeking relief from a judgment under Rule 60(b), Fed.R.Civ.P. So treated, we think that the preliminary injunction should be denied for several reasons. The relief is not sought on the basis of newly discovered evidence or changed conditions since the date of the decree. While there have been further important developments in the applicable law,[4] basically the plaintiffs are undertaking to present the question which the Court held was not presented by the record in *Fortson v. Dorsey*, 1965, 379 U.S. 433, 439:

"It might well be that, designedly or otherwise, a

---

[3] The Court's decree provides that

". . . the apportionment of the Alabama Legislature as herein ordered remain in effect without change, except by order of this Court, until the Legislature of the State of Alabama reapportions itself in accordance with the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States, after the next decennial census to be conducted in 1970, which nothing in this decree shall prevent it from doing; the apportionment of the Alabama Legislature as herein ordered shall remain in effect without any change until such action by the Legislature which shall not occur prior to the next decennial census to be conducted in 1970."

[4] See particularly Burns v. Richardson, 1966, 384 U.S. 73, and Chavis v. Whitcomb, S.D. Ind., decided July 28, 1969, ... F.Supp. ....., appeal to the Supreme Court of the United States now being sought.

> multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. This question, however, is not presented by the record before us."

As to other aspects of the legislative reapportionment plan for the House of Representatives, that question was not only presented but was sustained in *Sims v. Baggett.*[5]

The present plaintiffs had an opportunity in *Sims v. Baggett* to raise the questions now presented but failed to do so. There was no objection at that time to this Court's holding "that no county be subdivided to create a legislative district" (247 F.Supp. 103, repeated at 105). The complaint in the present action was filed on January 13, 1970, more than four years after the judgment was entered in *Sims v. Baggett, supra,* and at such time that a three-judge district court could not be convened for the hearing of the application for preliminary injunction until February 25, 1970, only three days before the expiration of the date for filing notice of candidacy for nomination to office by the Democratic Party of Alabama, the predominant political party in said State. In our opinion the complaint was not filed "within a reasonable time" within the meaning of Rule 60(b), Fed.R.Civ.P.

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[5] "In Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct 498, 13 L.Ed.2d 401 (1965), the Supreme Court recognizes that multi-county, multi-representative districts, under the circumstances of a particular case, 'would operate to minimize or cancel out the voting strength of racial or political elements * * * .' The question was not raised on the record in that case. The court, therefore, held that 'under the circumstances, this issue has "not been formulated to bring it into focus, and the evidence has not been offered or appraised to decide it, our holding has no bearing on that wholly separate question." Wright v. Rockefeller, 376 U.S. 52, 58 [84 S.Ct. 603].' The Fortson case does not support the contention that multi-county, multi-representative districts are permissible regardless of their effect or the motive underlying their creation.

"In our opinion the present case falls squarely within the rationale of Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960). The House plan clearly contravenes the Fourteenth and Fifteenth Amendments to the United States Constitution and must, therefore, be declared invalid."

247 F. Supp. at 110.

The plaintiffs urge that by the use of the words "except by order of this Court" in the judgment or decree of *Sims v. Baggett, supra,* this Court reserved jurisdiction to change the judgment or decree. Assuming that we have such a discretion, we do not think that it should be exercised. Clearly, this Court should not itself subdivide a county for legislative representation during the period of time that it has enjoined the Legislature from so doing, because any such subdivision is, of course, primarily a legislative function.

Nor do we think that a proper case has been made for this Court to compel legislative action. The Supreme Court has recognized that "limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system." *Reynolds v. Sims,* 1964, 377 U.S. 533, 583. The Supreme Court has further held that decennial reapportionment "would clearly meet the minimal requirements for maintaining a reasonably current scheme for legislative representation." *Id.,* 377 U.S. at 583, 584. The present reapportionment has remained in effect for less than half of the minimal ten-year period. After the completion of the 1970 census the Legislature can be expected with reasonable dispatch to reapportion both the House and the Senate in such a manner as will not deprive any voter of the equal protection of the laws as guaranteed by the

Fourteenth Amendment. The earlier action here sought would necessarily be hasty and incomplete, as well as being based upon inadequate and uncertain factual evidence. Since the Legislature has complied with this Court's decree in *Sims v. Baggett, supra,* and has been enjoined by this Court from making any changes in the reapportionment therein ordered, we think it would be unreasonable and unwise to require any legislative reapportionment prior to the time fixed in that decree, that is, prior to the first legislative session following the completion of the 1970 decennial census. In our opinion this Court should deny the plaintiffs' motion for preliminary injunction.

However, we should also deny the defendants' motion to dismiss the complaint, retain jurisdiction of the complaint, and postpone a hearing on the merits, if any hearing should be necessary, until the Alabama Legislature has reapportioned the two Houses of the Legislature or has unreasonably failed in its duty so to do.

It would, of course, be premature for this Court to pass upon the factual or legal merits of the plaintiffs' complaint. In our opinion, however, the evidence offered in support of the plaintiffs' claims, if such evidence is substantiated by the 1970 decennial census and by the further evidence then available, makes out a strong case for the consideration of the Legislature of Alabama. Indeed, in all probability, this Court would grant some relief to the plaintiffs at this time but for the existence of the reasons heretofore stated for denial of the plaintiffs' motion for preliminary injunction.

If the multi-member election of legislators to the Alabama Legislature from any county on a county-at-large basis operates to minimize or dilute the voting strength of Negroes in said county to the extent that they are deprived of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, then, of course, Section 200 of the Constitution of Alabama would in no way prevent the Legislature of Alabama from dividing the county into such separate legislative districts as might be needed to effect compliance with the Constitution of the United States. That is true because of the principle stated in *Reynolds v. Sims*, 1964, 377 U.S. 533, 584, that "when there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls." Similarly, nothing said in this Court's opinion in *Sims v. Baggett*, *supra*, could prevent a county from being subdivided into separate legislative districts in order to effect compliance with the Constitution of the United States.

It would be premature for this Court to rule upon the plaintiffs' claims until after the 1970 decennial census and until after appropriate action by the Legislature of Alabama. If further action by this Court then appears appropriate, more exact factual information will be available and the legal and constitutional issues will be more sharply defined.

ORDER

It is ORDERED and ADJUDGED by this Court:

1. That the plaintiffs' motion for preliminary injunction be and the same is hereby denied;

2. That the defendants' motion to dismiss the complaint be and the same is hereby denied;

3. That the hearing on the merits of the case be postponed until the further order of this Court.

Done this the 4th day of March 1970.

s/ RICHARD T. RIVES
United States Circuit Judge

s/ DANIEL H. THOMAS
United States District Judge

s/ FRANK M. JOHNSON, JR.
United States District Judge

APPENDIX B

Official Election Results

Do you want the Black Bloc Vote to elect and control the Governor's Office and our State?

Think—Only 16% of the White Voters voted for Brewer!

What Was The Deal? **What Were the Promises?**
What would we have to pay?

MORE THAN 250,000 BLACKS-BLOC VOTED FOR BREWER

HERE ARE A FEW EXAMPLES OF THE BLOC VOTING

CHOCTAW COUNTY

Yantley—Beat 3, Box 2

BREWER	153
WALLACE	18

DALLAS COUNTY

Precinct 36, Box 21

BREWER	196
WALLACE	3

George Washington Carver Holmes
Precinct 36, Box 33

BREWER	149
WALLACE	0

Lutheran School, Precinct 36, Box 35

BREWER	189
WALLACE	3

HALE COUNTY

Beat 9, Laneville

BREWER	139
WALLACE	9

JEFFERSON COUNTY

Over 50,000 Black Bloc—voted here

Washington School

BREWER	1,667
WALLACE	6

Roosevelt School—Bessemer, Box 13

BREWER	757
WALLACE	0

Parker High—Box 17

BREWER	1.313
WALLACE	9

Center Street School—Box 16

BREWER	1.781
WALLACE	6

Wenonah Junior High School—Box 14

BREWER	873
WALLACE	17

Old Ensley Police Station—Box 1

BREWER	1,220
WALLACE	6

Bryants Chapel AME Church—Bessemer

BREWER	561
WALLACE	3

MONTGOMERY COUNTY

Hamner Hall—Precinct 2N

BREWER	1,523
WALLACE	271

Cleveland Ave. Fire Station, Precinct 2-S-1

BREWER	1,647
WALLACE	166

SUMTER COUNTY—Whitfield

BREWER	121
WALLACE	10

TALLADEGA COUNTY

College Hill Area, Box 17-A & 17-B

BREWER	597
WALLACE	22

TUSCALOOSA COUNTY

Druid High—Beat 16, Box 19-A

BREWER	204
WALLACE	1

Druid High—Beat 16, Box 19-B

BREWER	230
WALLACE	1

MOBILE COUNTY

Davis Recreation Center—Ward 10

BREWER	1.848
WALLACE	32

Pd. Adv. by Rank & File Labor Comm., Bill Skinner, Mulga, Ala. Chmn.

APPENDIX C

THIS IS THE WAY THE NEGRO BLOC VOTE WENT

MAY 5 For HOUSE PLACE 9

Do You Want the Negro Bloc Vote to CONTROL Your Jefferson County Legislators?

If You DON'T Want Such Control, Then Vote For

TOMMY WATKINS

An Experienced, Qualified and Dependable Legislator Who Will Be Fair To All Our Citizens

For HOUSE PLACE 9

HERE IS HOW THE NEGRO BLOC VOTE WENT MAY 5 IN THESE PREDOMINANTLY NEGRO BOXES:

HUDSON SCHOOL

PRECINCT 7—BOX 4

DOSS	1385
WATKINS	42

CITY AUDITORIUM

PRECINCT 8—BOX 1

DOSS	1067
WATKINS	145

WASHINGTON SCHOOL

PRECINCT 9—BOX 4

DOSS	1192
WATKINS	61

PARKER HIGH GYM

PRECINCT 9—BOX 17

DOSS	845
WATKINS	58

WENONAH JUNIOR HIGH

PRECINCT 9—BOX 14

DOSS	758
WATKINS	30

FINLEY AVE. SCHOOL

PRECINCT 7—BOX 5

DOSS	650
WATKINS	35

OLD POLICE COURT ROOM, ENSLEY

PRECINCT 5—BOX 1

DOSS	830
WATKINS	53

ROOSEVELT SCHOOL (Bessemer)

PRECINCT 1—BOX 13

DOSS	769
WATKINS	15

CENTER STREET SCHOOL

PRECINCT 9—BOX 16

DOSS	1441
WATKINS	75

McCAW SCHOOL

PRECINCT 6—BOX 2

DOSS	505
WATKINS	31

Pd. pol. adv. by Don White, 5401 9th Ave., S., B'ham

BIRMINGHAM POST-HERALD — Friday, May 29, 1970 — PAGE 13

IN THE

Supreme Court of The United States

October Term, 1970

No. 92

EDGAR D. WHITCOMB, GOVERNOR
of the State of Indiana

Appellant,

v.

PATRICK CHAVIS, et al.

Appellees.

On Appeal From The United States District Court
For The Southern District of Indiana,
Indianapolis Division

REPLY BRIEF FOR APPELLANT

I

The appellees rely heavily, in their brief, on admissions of fact which they claim were made by appellants, hereafter referred to as the state, in this case. The appellees filed their "Request for Admissions" numbering one hundred and eighteen (118), on February 4, 1969. The appellees claim that all one hundred and eighteen (118) of their requests for admissions from the state were in fact admitted by the state. In reviewing the record in this case, the state notes that on March 7, 1969, a "Joint Report of Meeting Between Counsel", signed by trial counsel for the appellees and the state, was filed with the district court below. The record shows that:

> "3. Defense counsel then pointed out to plaintiffs' counsel that his copies of plaintiffs' requests for admissions had been logged in by the receptionist of the Attorney General's office on February 13, 1969 and not on February 4, 1969, the date of filing. Plaintiffs' counsel replied that service had been made personally by plaintiffs' counsel on February 4th and that the acknowledgment of service had been signed by a Deputy Attorney General on that day. Defense counsel suggested that the late logging should at least establish his personal good faith in the matter and plaintiffs' counsel agreed. The requests for admissions were then discussed with the following results:
>
> A. Requests numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 13, 14, 15, 16, 17, 18, 19, 21, 26, 39, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 93, 95, 96, 97, 98, 99, 100, 103, 104, 105, 106, 107, 109, 110, 111, and 112 are to be taken as admitted.
>
> B. The following requests are admitted as amended to read as follows:
>
> 3. That the census tracts listed in Request for Admission No. 2, supra, are in a cluster which is bounded by the streets and other landmarks in the manner described in the first paragraph of Memorandum 4 on page 18 of the complaint if lines six and seven of the said paragraph were to be amended. The said lines six and seven of the said paragraph now read:
>
> sylvania Avenue to 34th Street and then east on 34th Street to Keystone Avenue and then south on Keystone Avenue to 30th

And should be amended to read:

> sylvania avenue to 34th Street and then east on 34th Street to Central Avenue and then south on Central to Fall Creek and then north east on Fall Creek to 34th Street and then east on 34th Street to Keystone Avenue and then south on Keystone Avenue to 30th . . .

11. That the 1960 census showed the aforesaid 1960 Ghetto Area to contain about 40.45% of the dilapidated housing units in Marion County as defined by the 1960 census.

28. Admits no local option in Indiana.

41. That Marion County and Lake County are the only two counties in the State of Indiana which have 50,000 negro inhabitants.

80. That as of the 1960 Census, Marion County Outside Indianapolis contained about 14.43% of the deteriorating or dilapidated houses in Marion County as defined by the 1960 Census.

101. That the table appearing on page 64 of the complaint contains accurate statements as to the number of General Assembly Senators and Representatives allotted to Marion County, Indiana during the apportionments which took place during the years listed although one apportionment is not covered.

108. That the table appearing on page 68 of the complaint contains a correct portrayal of the number of bills successfully sponsored by Senators of the Defendant General Assembly who were incumbents when elected to the terms they were serving and by Senators who were not incumbants when elected to the terms which they were then serving.

C. The following requests are denied tentatively until defense counsel has had the opportunity to study a booklet by the Community Service Counsel of Metropolitan Indianapolis. It is probable that they will be admitted but defense counsel has in no way committed himself: 23, 24, 25, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 40.

D. The following request is denied tentatively until defense counsel has had the opportunity to study the Kerner Report. It is probable that it will be admitted but defense counsel has in no way committed himself: 44.

E. The following requests are denied tentatively until and unless defense counsel receives a letter from the Honorable Charles S. White of the Indiana Appellate Court who drew the existing districts of the defendant General Assembly representing that the facts suggested in the said requests are correct. Upon receipt of such a letter it is probable that the said requests will be admitted but defense counsel has in no way committed himself: 90 & 92.

F. The following requests are denied without qualification and plaintiffs' counsel agree that the denials are appropriate and in good faith: 20, 22, 27, 55, 56, 61, 62, 63, 64, 65, 94, 102, 113, 114, 115, 116, 117, and 118.

> "It is further agreed among counsel for all the parties that where the terms "Ghetto Area", "Ghetto Voting Area" and other such terms and the term "White Suburban Belt" appear in the pleadings in this cause, they are to be read as appearing in quotes."

The appellees rely upon certain of these so called admissions of fact to support the arguments made in their brief. After each so called admission of fact, the appellees have inserted a number in brackets corresponding to the numbers appearing in their "Request for Admissions." See footnote number 4 on page 9 of the voter's brief. As the joint report shows, not all of those requests were in fact admitted. Requests numbered 22, 55, 56, 61, 62, 63, 64, 65, 112, 113, 114, 115, 119, cited by the appellees in their brief as being admitted were in fact unqualifiedly denied by the state, as is indicated in the joint report. Furthermore, as is indicated in sub-paragraph F of the joint report, the appellees stipulated that the state's denial was in good faith. Also, requests numbered 29, 31, 32, 33, 35, 36, 37, 90, and 92, cited in the appellees' brief as being admitted, were tentatively denied, us indicated in the joint report. A search of the record does not disclose that those requests tentatively denied were in fact ever admitted. Admittedly, this is a technical matter, one in which the state does not place great store in a case of this sort. The issues are complex and involve an interpretation of supposed facts having high speculative value. For instance, the appellees allege that the state conceded the validity of "Banzhaf's analysis." This Court could hardly be bound by admissions by the parties regarding the validity of "Banzhaf's analysis." The analysis is at best philosophical and is a matter which could only be determinatively passed upon by this Court, notwithstanding admissions by the parties in this case.

In the same vein, the appellees in footnote number 5, at page 16 of their brief, refer to the case of *Bryant v. Whitcomb,* United States District Court for the Southern District of Indiana, Indianapolis, Division, Cause No. IP 69-C-115, February 3, 1970, to show that even Negro legislators from Marion County vote against the interests of the majority of the Negroes in the county. The appellees refer to what is known in this State as the Unigov Bill. The Unigov Bill extended the boundaries for the City of Indianapolis to the County line so that instead of having a city and county government in Marion County there is now but one municipal governing unit. The appellees claim that "[t]his statute subsequently was declared unconstitutional in part in three respects because it constituted a black voting rights violation" and that ". . . no appeal from Judge Steckler's decision because of said black voting rights violations were acknowledged." This is simply not so as a reading of Judge Steckler's opinion will indicate.

And finally, the appellees claim that a bill permitting an all-white part of Gary to secede from Gary as a response to the recent election of a Negro mayor never became law only because it was stolen from a stack of bills being transmitted to the Office of the Governor of Indiana for signing. There is nothing in this record regarding this matter. It has no bearing on this case. At best it is an unverified scandalous allegation. The sole support for the veracity of this claim is the appellee's assertion in their brief that it occurred.

II.

The district court found that the Marion County multi-member district was unconstitutional because it operated to minimize and cancel out the vote of the residents of the Center Township Ghetto. Secondly, the district court found that the Marion County multi-member district was unconstitutional because the vote of a resident of Marion County was worth more than the vote of a resident of a single member district, or for that matter any smaller multi-member districts electing fewer legislators. The first finding of the district court was based on social, racial and economic factors and upon the distribution of elected legislators within the Marion County District. The second finding was based solely upon the testimony of John

Banzhaf in the district court and an article written by him appearing at 75 Yale Law Journal 1319 (1966).

It should be noted that "Banzhaf's Analysis," relied upon by the district court and by the appellees provides the basis for the second finding of the court that an apportionment scheme of districts whose sizes differ violates the one-man one-vote principles of this Court, even though the ratio of legislators to population are the same for each district.

(a) The Voters Present No Sound Argument To Rebut Arguments Of The State That the District Court Erred When It Found That the Marion County Multi-Member District Unconstitutionally Diluted The Vote Of A Cognizable Racial Majority Within Marion County.

The decision of the district court was based on findings that legislators elected from Marion County were not distributed throughout Marion County in such a way that a proportionate number of legislators resided within an area designated by the district court as the Center Township Ghetto, a cohesive racial minority declared to exist by the court. The appellees apparently concede that the district court erred when it based its decision upon the location of the residence of legislators elected from Marion County. As a matter of fact, the appellee's position apparently is that the district court's analysis is completely erroneous in every respect but for its conclusion that the Marion County multi-member district unconstitutionally dilutes the vote of a cognizable racial minority residing within Marion County. The appellees aver, at page 3 of their brief, that:

> "Certain negative descriptions of appellee's case are appropriate to this summary. Appellees do not contend that the race or ethnic background of legislators can have anything but the most minimal signifi-

> cance in determining whether the citizens of a given locality are entitled to have a multi member legislative district broken up. Appellees likewise do not contend that any demonstration as to where the elected representatives live within a multi-member legislative district can constitute a conclusive or near-conclusive showing that any voting rights dilution results from such a district. Finally, appellees do not contend that minority groups are entitled to have district lines drawn in such a manner as to enhance their voting power. To the extent that the appellants and amici have suggested that the appellees are relying on the three foregoing possible contentions they have mischaracterized the appellee's case."

Evidence was introduced by the appéllees and the state at the trial of this cause. At the conclusion of the trial, the district court made a decision and entered its judgment. The basis for that decision is set out in the district court's opinion. The district court sorted out the evidence and selected those matters upon which it would rely. Inferentially, the evidence upon which the district court relied was found to be relevant. But the evidence upon which the district court did not rely, it found to be irrelevant or of no probative value. Now the appellee's position is that the district court relied upon the wrong evidence and in so doing erred. Thus, both the appellees and the State agree that the basis for the decision of the district court was erroneous.

The appellees have elected to argue that evidence not relied upon by the district court nevertheless supports the decision of the district court. Inferentially, the district court, in refusing to rely upon the evidence upon which the appellees rely, found that the evidence upon which the appellees rely in their brief had no probative value. Hence, this Court need not take cognizance of the purported facts upon which appellees rely in their argument.

Turning to the appellee's argument, in addition to relying upon facts rejected by the district court, it relies upon facts purportedly admitted by the state, but some of which, as the state has already pointed out, were denied by the state. Secondly, at best the appellees can only be regarded as arguing that there is within Marion County a relatively cohesive group of residents whose interests differ significantly from the residents of the rest of the County. The argument is hardly sufficient to justify the district court's decision that the Marion County multi-member district unconstitutionally diluted the vote of that group. The appellees have done no more than discover a special interest group. As the state has already argued in their opening brief, the interest group discovered by the appellees in this case is entitled to no more consideration than any other interest group within Marion County or the State. And finally, neither the appellees nor the district court has been able to show that the interest of the Ghetto are interests solely of the Ghetto. Rather, the evidence shows that the interests of the Ghetto are indeed interests of the County and interests of the State at large. For instance, it has been the State Legislature, not the Ghetto, which has enacted unemployment compensation laws, welfare laws, minimum wage laws and civil rights laws to name just a few. See the appellee's "Complaint for Civil Action", "Memorandum 7" at pages 41 and 42 of the Appendix where the appellee's have summarized some of the legislation enacted by the State Legislature directly benefiting Ghetto residents. Moreover, the State submits that the legislation to which the appellees refer is in fact evidence that the interest of the Ghetto are interests of the state and that the interests of the Ghetto are not ignored, but rather have a significant weight in the legislature.

(b) Banzhaf's Analysis Is Not A Sound Basis Upon Which To Conclude That A Mixed Apportionment Scheme Of Districts Of Differing Sizes Is Unconstitutional.

In its opening brief, the State argued that one basis for the district court's decision that the Marion County multi-member district was unconstitutional was that a voter residing in the Marion County multi-member district had greater voting power than the vote of a resident of a single member district or than the vote of a resident of a smaller multi-member district. This the appellees concede in their answer brief beginning at page 12. See also an article by Robert G. Dixson, Jr. "The Warren Court Crusade for The Holy Grail of 'One Man-One Vote'" *The Supreme Court Review* (1969) 219, 261. Thus, the state submits that the district court effectively held that any state apportionment scheme providing for the election of legislators from districts of varying sizes was unconstitutional *per se*.

The appellees argue that "Banzhaf's Analysis" provides an adequate theoretical basis for the decision of the district court. It should be noted that the district court did not squarely adopt Banzhaf's Analysis. Banzhaf's Analysis applies mathematically complex equations to a concept denominated a "critical vote." The district court did not make use of the complex mathematical equations employed by Banzhaf to make his point. The district court took Banzhaf's critical vote concept standing alone and applied it to the Indiana apportionment scheme. A critical vote is one voter's opportunity to cast a deciding vote, that is to say, break a tie. According to the district court, the larger the district, the more critical votes a voter might cast and, hence, the greater his voting power as compared to a voter in a single member district. The traditional view of voting power heretofore impliedly applied by this Court was that the voter of a multi-member district has an advantage over the voter in a single member district because he may vote for more legislators, but that this advantage is offset by the fact that he is a part of a larger electorate. See 75 *Yale Law Journal* 1308, 1311 (1966), footnote 24.

One view of the district court's decision is that it is contrary to the decisions of this Court impliedly accepting and applying what the state denominates as the traditional view. Another view of the decision of the district court, in this regard, is that it is a variation of Banzhaf's Analysis. In either event the reasoning of the district court is unsound.

The very core of Banzhaf's Analysis is the concept denominated by him as a critical vote, sometimes referred to as a deciding vote. A critical vote as defined by Banzhaf is a tie breaking vote. In an election between two candidates in a district of X number of voters, based on the laws of chance, there are Y number of ways in which the voters might combine. Of Y number of combinations, a percentage of those will differ by one vote. The larger the district, the greater the number of combinations, but the lesser the percentage of combinations in which a candidate might win by one vote. In other words, of the votes cast in an election between two candidates, the outcome of the election might be decided by one vote in a fixed percentage, depending upon the number of votes being cast. Furthermore, as the size of the district increases, any given voter's chance to cast a critical vote decreases but at a rate less than the proportionate increase in the number of legislators running for a seat from that district. The state submits that Banzhaf's Analysis is not a sound basis upon which to require uniform districts.

Banzhaf's Analysis breaks down at a number of different points. The basic question is whether the concept of a critical vote is meaningful. Can one voter ever cast a deciding vote? Once the votes are cast, counted and a candidate elected, can any one of the votes cast for the winning candidate be said to count more than any other vote for the winning candidate? The critical vote concept is a mirage. Looking forward, before the votes are cast, Banzhaf theorizes that where an election is decided by one vote, that one vote counts more. On the other hand, looking backward, after all the votes have been cast, all votes for a winning candidate count the same, even though a candidate may have been elected by a margin of one vote. For example, where the winning candidate receives one hundred votes (100) and the losing candidate receives ninety-nine (99) votes, all one hundred (100) votes count for the same. Not one of the one hundred (100) votes cast counts for more. Yet Banzhaf's Analysis is valid and relevant only if one vote counts for more than another, that is to say, only if the one vote difference counts for more than all the other votes cast for the winning candidate.

Even if the concept of a critical vote could somehow be regarded as meaningful, the analysis is still defective. Banzhaf's Analysis is grounded on one voter's theoretical opportunity or chance to affect the outcome of an election by casting the "deciding vote". Banzhaf's Analysis only provides us with a means, an instrument, with which to determine the percentage of combinations in which one candidate would receive one more vote than the losing candidate. The state submits that an additional computation must be made to show the probability that any given election between two candidates might be decided by one vote. If the probability that an election between two candidates will be decided by one vote is miniscule, then the phenomenon to which Banzhaf addresses himself may never occur. Elections between two candidates involving thousands of voters, decided by one vote, are so rare as to make Banzhaf's Analysis meaningless.

The relevance of Banzhaf's Analysis turns in part upon the tendency of legislators elected from a multi-member district to vote as a bloc. The testimony in the court below was that slating, the strength of county political parties and the influence of the county chairman tended to produce bloc voting among the legislators elected from Marion County. Banzhaf testified that if legislators elected from Marion County voted more or less independently on most issues, the problem of unequal voting power did not arise, even though the legislators were elected at large. (A. p. 142) Thus, inferentially, as long as legislators elected from Marion County vote as a bloc, the ultimate voting power of those electing them is greater, even if the Marion County legislators were elected from single member districts. Implicit in the district court's decision to break up the Marion County multi-member district was a conclusion that by breaking up the district, the power of the county political organizations and the county chairman would also be broken. There is no reason to suppose, nor is there evidence to support a conclusion, that that result would obtain. Rather, the state submits that slating would go on and that the county political parties and their chairman would continue to exert strong influence on the voting patterns of legislators elected from Marion County, even if elected from single member districts. There is no reason to suppose that legislators elected from single member districts within Marion County would not vote as a bloc on significant issues. If the evil is bloc voting by Marion County legislators, breaking up the Marion County multi-member district will not achieve the end for which it was designed.

More could be said regarding the validity and soundness of Banzhaf's Analysis. Suffice it to say that Banzhaf's Analysis is so speculative as to provide a wholly inadequate and unsound basis upon which to decide a case as significant as this.

III.

In part III of their brief the appellees address themselves to certain issues raised and arguments made by the state in its opening brief. The voters say little in this section of their brief which requires a rebuttal.

In sub-part A the appellees argue that the district court did not freeze in place the geographical and political integrity of the voters of the "Center Township Ghetto." However, the appellees ignore the clear pronouncements of the district court that it did in fact take cognizance of the Ghetto when it reapportioned the State. See pages 395 and 396 of the Appendix and page 34 of the state's opening brief. What is more, the district court had no choice but to take cognizance of the location of the Ghetto. It was the supposed dilution of the vote of the residents of the Ghetto which led to the court's decision. To ignore the location of the residents of the Ghetto would be to say no less than that, although the residents of the Ghetto had suffered a violation of their constitutional rights, there was no remedy which the district court could afford them. The only way the district court could repair the constitutional deprivation which it found to exist was to take cognizance of the location of the residents of the Ghetto. This state of affairs squarely raises the spectre of gerrymandering. The decision of the district court in this respect raises an irreconcilable dilemma. On the one hand, to redistrict Marion County with a view to the location of the residents of the Ghetto can be no less than gerrymandering. On the other hand, to wholly ignore the location of the residents of the Ghetto is to afford them no relief for the wrongs supposed to exist by the district court.

In sub-part C of their brief, the appellees concede that the 1960 census figures did not provide a sound basis upon which to reapportion the state on the eve of the 1970 census, as argued by the state. In sub-part D, the appellees concede that the Marion County multi-member district was not designed to cancel out the strength of racial or political elements of the voting population.

The appellees present nothing in sub-parts B and E requiring a rebuttal from the state.

CONCLUSION

The decision of the district court in this case is unsound. The district court erred and must be reversed.

Respectfully submitted.

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WHITCOMB, GOVERNOR OF INDIANA *v.* CHAVIS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 92. Argued December 8, 1970—Decided June 7, 1971

This suit was brought by residents of Marion and Lake Counties, Indiana, challenging state statutes establishing Marion County as a multi-member district for the election of state senators and representatives. It was alleged, first, that the laws invidiously diluted the votes of Negroes and poor persons living in the "ghetto area" of Marion County, and second, that voters in multi-member districts were overrepresented since the true test of voting power is the ability to cast a tie-breaking vote, and the voters in multi-member districts had a greater theoretical opportunity to cast such votes than voters in single-member districts. The tendency of multi-member district legislators to vote as a bloc was alleged to compound this discrimination. The three-judge court, though not ruling squarely on the second claim, determined that a racial minority group with specific legislative interests inhabited a ghetto area in Indianapolis, in Marion County; that the statutes operated to minimize and cancel out the voting strength of this minority group; and that redistricting Marion County alone would leave impermissible variations between Marion districts and others in the State, thus requiring statewide redistricting, which could not await 1970 census figures. The court held the statutes unconstitutional, and gave the State until October 1, 1969, to enact reapportionment legislation. No such legislation ensued, and the court drafted a plan using single-member districts throughout the State. The 1970 elections were ordered to be held in accordance with the new plan. This Court granted a stay of judgment pending final action on the appeal, thus permitting the 1970 elections to be held under the condemned statutes. Under those statutes, based on the 1960 census, there was a maximum variance in population of senate districts of 28.20%, with a ratio between the

Syllabus

largest and smallest districts of 1.327 to 1, and a maximum variance in house districts of 24.78%, with a ratio of 1.279 to 1. *Held:*

The judgment is reversed and the case remanded. 305 F. Supp. 1364, reversed and remanded.

Mr. Justice White delivered the opinion of the Court with respect to Parts I–VI, finding that:

1. Although, as the Court was advised on June 1, 1971, the Indiana legislature enacted new apportionment legislation providing for state-wide single-member house and senate districts, the case is not moot. Pp. 14–15.

2. The validity of multi-member districts is justiciable, but a challenger has the burden of proving that such districts unconstitutionally operate to dilute or cancel the voting strength of racial or political groups. Pp. 15–17.

3. The actual, as distinguished from theoretical, impact of multi-member districts on individual voting power has not been sufficiently demonstrated on this record to warrant departure from prior cases involving multi-member districts, and neither the findings below nor the record sustains the view that multi-member districts overrepresent their voters as compared with voters in single-member districts, even if the multi-member legislative delegation tends to bloc voting. Pp. 17–22.

4. Appellees' claim that the fact that the number of ghetto residents who were legislators was not proportionate to ghetto population proves invidious discrimination, notwithstanding the absence of evidence that ghetto residents had less opportunity to participate in the political process, is not valid, and on this record the malproportion was due to the ghetto voters' choices losing the election contests. Pp. 22–28.

5. The trial court's conclusion that, with respect to their unique interests, ghetto residents were invidiously underrepresented due to lack of their own legislative voice, was not supported by the findings. Moreover, even assuming bloc voting by the county delegation contrary to the ghetto majority's wishes, there is no constitutional violation, since that situation inheres in the political process, whether the district be single- or multi-member. P. 29.

6. Multi-member districts have not been proved inherently invidious or violative of equal protection, but, even assuming their unconstitutionality, it is not clear that the remedy is a single-member system with lines drawn to ensure representation to all sizable racial, ethnic, economic, or religious groups. Pp. 30–34.

Syllabus

7. The District Court erred in brushing aside the entire state apportionment policy without solid constitutional and equitable grounds for doing so, and without considering more limited alternatives. Pp. 34–35.

MR. JUSTICE WHITE, joined by THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE BLACKMUN, concluded, in Part VII, that it was not improper for the District Court to order statewide redistricting on the basis of the excessive population variances between the legislative districts shown by this record. That court ordered reapportionment not because of population shifts since its 1965 decision upholding the statutory plan but because the disparities had been shown to be excessive by intervening decisions of this Court. Pp. 35–37.

MR. JUSTICE DOUGLAS, joined by MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, concluded, with respect to redistricting the entire State, that there were impermissible population variances between districts under the current apportionment plan, and that the new Marion County districts would also have impermissible variances, thus requiring state-wide redistricting. P. 9.

WHITE, J., announced the Court's judgment and delivered an opinion, for the Court with respect to Parts I–VI, in which BURGER, C. J., and BLACK, STEWART, and BLACKMUN, JJ., joined, and in which, as to Part VII, BURGER, C. J., and BLACK and BLACKMUN, JJ., joined. STEWART, J., filed a statement joining in Parts I–VI of the opinion of WHITE, J., and dissenting from Part VII. HARLAN, J., filed a separate opinion. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 92.—October Term, 1970

Edgar D. Whitcomb, Governor of the State of Indiana, Appellant, *v.* Patrick Chavis et al.	On Appeal From the United States District Court for the Southern District of Indiana.

[June 7, 1971]

Mr. Justice White delivered the opinion of the Court with respect to the validity of the multi-member election district in Marion County, Indiana (Parts I–VI), together with an opinion (Part VII), in which The Chief Justice, Mr. Justice Black, and Mr. Justice Blackmun joined, on the propriety of ordering redistricting of the entire State of Indiana, and announced the judgment of the Court.

We have before us in this case the validity under the Equal Protection Clause of the statutes districting and apportioning the State of Indiana for its general assembly elections. The principal issue centers on those provisions constituting Marion County, which includes the city of Indianapolis, a multi-member district for electing state senators and representatives.

I

Indiana has a bicameral general assembly consisting of a house of representatives of 100 members and a senate of 50 members. Eight of the 31 senatorial districts and 25 of the 39 house districts are multi-member districts, that is, districts which are represented by two or more legislators elected at large by the voters of the district.[1] Under the statutes here challenged, Marion County is a multi-member district electing eight senators and 15 members of the house.

On January 9, 1969, six residents of Indiana, five of whom were residents of Marion County, filed a suit described by them as "attacking the constitutionality of two statutes of the State of Indiana which provide for multi-member districting at large of General Assembly seats in Marion County, Indiana . . . ."[2] Plaintiffs[3] Chavis, Ramsey, and Bryant alleged that the two statutes invidiously diluted the force and effect of the vote of Negroes and poor persons living within certain Marion County census tracts constituting what was termed "the ghetto area." Residents of the area were alleged to have particular demographic characteristics rendering them cognizable as a minority interest group with distinctive interests in specific areas of the substantive law. With single-member districting, it was said, the ghetto area would elect three members of the house and one senator, whereas under the present districting voters in the area "have almost no political force or control over legislators because the effect of their vote is cancelled out by other contrary interest groups" in Marion County. The mechanism of political party organization and the influence of party chairmen in nominating candidates were additional factors alleged to frustrate the exercise of power by residents of the ghetto area.

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[1] As later indicated, shortly before announcement of this opinion, the Court was informed that the statutes at issue here will soon be superceded by new apportionment legislation recently adopted by the Indiana Legislature and signed by the governor. That legislation provides for single-member districts throughout the State including Marion County. For the reasons stated below the controversy is not moot, and as will be evident, this opinion proceeds as though the state statutes before us remain undisturbed by new legislation.

[2] The provisions attacked, contained in Acts 1965 (2d Spec. Sess.) c. 5, § 3, and c. 4, § 3, and appearing in Burns' (1969 Repl.), §§ 34-102 and 34-104 were as follows:

"34-102. *Apportionment of representatives.*—Representatives shall be elected from districts comprised of one (1) or more counties and having one (1) or more representatives as follows: . . . Twenty Sixth District Marion County: fifteen (15) representatives . . . .

"34-104. *Apportionment of senators.*—Senators shall be elected from districts, comprised of one or more counties and having one or more senators, as follows: . . . Nineteenth District—Marion County: eight (8) senators, two (2) to be elected in 1966.

. . . . .

The District Court denied plaintiffs' motion to have the suit declared a class action under Fed. Rule Civ. Proc. 23 (b). *Chavis* v. *Whitcomb*, 305 F. Supp. 1359, 1363 (SD Ind. 1969). See n. 17, *infra*.

[3] Plaintiffs in the trial court are appellees here and defendants are appellants. We shall refer to the parties in this opinion as they stood in the trial court.

Plaintiff Walker, a Negro resident of Lake County, also a multi-member district but a smaller one, alleged an invidious discrimination against Lake County Negroes because Marion County Negroes, although no greater in number than Lake County Negroes, had the opportunity to influence the election of more legislators than Lake County Negroes.[4] The claim was that Marion County was one-third larger in population and thus had approximately one-third more assembly seats than Lake County, but that voter influence does not vary inversely with population and that permitting Marion County voters to elect 23 assemblymen at large gave them a disproportionate advantage over voters in Lake County.[5] The two remaining plaintiffs presented claims not at issue here.[6]

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[4] Walker also alleged that "in both Lake and Marion County, Indiana there are a sufficient number of negro [*sic*] voters and inhabitants for a bloc vote by the said inhabitants to change the result of any election recently held."

[5] The mathematical basis for the assertion was set out in detail in the complaint. See also n. 23, *infra*. It was also alleged that "[b]oth Marion County . . . and Lake County . . . are the sole matter

A three-judge court convened and tried the case on June 17 and 18, 1969. Both documentary evidence and oral testimony were taken concerning the composition and characteristics of the alleged ghetto area, the manner in which legislative candidates were chosen and their residence and tenure, and the performance of Marion County's delegation in the Indiana general assembly.[7]

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for consideration before two separate state legislative committees, one directed to the affairs of each county. The laws enacted . . . which directly effect [*sic*] Marion or Lake County typically apply to only one county or the other." App. 15.

[6] Plaintiff Marilyn Hotz, a Republican and a resident of what she described as the white suburban belt of Marion County lying outside the city of Indianapolis, alleged that malapportionment of precincts in party organization together with multi-member districting invidiously diluted her vote.

Plaintiff Rowland Allan (spelled "Allen" in the District Court's opinion), an independent voter, alleged that multi-member districting deprived him of any chance to make meaningful judgments on the merits of individual candidates because he was confronted with a list of 23 candidates of each party.

[7] In their final arguments and proposed findings of fact and conclusions of law plaintiffs urged that the Center Township ghetto was largely inhabited by Negroes who had distinctive interests and whose bloc voting potential was canceled out by opposing interest groups in the at-large elections held in Marion County's multi-member district, that the few Negro legislators, including the three then serving the general assembly from Marion County, were chosen by white voters and were unrepresentative of ghetto Negroes, and that Negroes should be given the power and opportunity to choose their own assemblymen. It was also urged that the power of political as well as racial elements was canceled out in that in every assembly election since 1922, one party or the other had won all the seats with two minor exceptions; hence many voters, in numbers large enough and geographically so located as to command control over one or more general assembly seats if Marion County were subdistricted, were wholly without representation whichever way an assembly election turned out.

The defendants argued that Marion County's problems were

The three-judge court filed its opinion containing its findings and conclusions on July 28, 1969, holding for plaintiffs. *Chavis* v. *Whitcomb,* 305 F. Supp. 1364 (SD Ind. 1969). See also 305 F. Supp. 1359 (1969) (pre-trial orders) and 307 F. Supp. 1362 (1969) (statewide reapportionment plan and implementing order). In sum, it concluded that Marion County's multi-member district must be disestablished and, because of population disparities not directly related to the phenomena alleged in the complaint, the entire State must be redistricted. More particularly, it first determined that a racial minority group inhabited an identifiable ghetto area in Indianapolis.[8] That area, located in the northern half of Center Township and termed the "Center Township ghetto," comprised 28 contiguous census tracts and parts of four others.[9] The area contained a 1967 population

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county-wide and that its delegation could better represent the various interests in the county if elected at large and responsible to the county as a whole rather than being elected in single-member districts and thus fragmented by parochial interests and jealousies. They also urged that the 1960 census figures were an unreliable basis for redistricting Marion County and opposed the court's suggestion that the apportionment of the whole State was an issue properly before the court on the pleadings and the evidence.

[8] A ghetto was defined as a residential area with a higher density of population and greater proportion of substandard housing than in the overall metropolitan area and inhabited primarily by racial or other minority groups with lower than average socioeconomic status and whose residence in the area is often the result of a social, legal or economic restrictions or custom. 305 F. Supp., at 1373.

[9] The court's ghetto area was not congruent with that alleged in the complaint. It included five census tracts and parts of four others not within the ghetto area alleged in the complaint, but it omitted census tract 220 which the complaint had included. 305 F. Supp., at 1379–1381. That district, which was contiguous to both tract 211 and the ghetto area, was inhabited primarily by Negroes but was found to be a middle class district differing substantially in critical elements from the remainder of the ghetto. The court

of 97,000 nonwhites, over 99% of whom were Negro, and 35,000 whites. The court proceeded to compare six of these tracts, representative of the area, with tract 211, a predominantly white, relatively wealthy suburban census tract in Washington Township contiguous to the northwest corner of the court's ghetto area and with tract 220, also in Washington Township, a contiguous tract inhabited by middle class Negroes. Strong differences were found in terms of housing conditions, income and educational levels, rates of unemployment, juvenile crime and welfare assistance. The contrasting characteristics between the court's ghetto area and its inhabitants on the one hand and tracts 211 and 220 on the other indicated the ghetto's "compelling interests in such legislative areas as urban renewal and rehabilitation, health care, employment training and opportunities, welfare, and relief of the poor, law enforcement, quality of education, and anti-discrimination measures." 305 F. Supp., at 1380. These interests were in addition to those the ghetto shared with the rest of the county, such as metropolitan transportation, flood control, sewage disposal, and education.

The court then turned to evidence showing the residences of Marion County's representatives and senators in each of the five general assemblies elected during the

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also made it unmistakably clear that its ghetto area "does not represent the entire ghettorized portion of Center Township but only the portion which is predominantly inhabited by Negroes and which was alleged in the complaint." 305 F. Supp., at 1380–1381. Although census tract 563, a tract "randomly selected to typify tracts . . . within the predominantly white ghetto portion of Center Township," *id.*, at 1374, was shown to have characteristics very similar to the tracts in the court's ghetto area except for the race of its inhabitants, the size and configuration of the white ghetto area were not revealed by the findings.

period 1960 through 1968.[10] Excluding tract 220, the middle class Negro district, Washington Township, the relatively wealthy suburban area in which tract 211 was located, with an average of 13.98% of Marion County's population, was the residence of 47.52% of its senators and 34.33% of its representatives. The court's Center Township ghetto area, with 17.8% of the population, had 4.75% of the senators and 5.97% of the representatives. The nonghetto area of Center Township, with 23.32% of the population, had done little better. Also, tract 220 alone, the middle class Negro district, had only .66% of the county's population but had been the residence of more representatives than had the ghetto area. The ghetto area had been represented in the senate only once—in 1964 by one senator—and the house three times—with one representative in 1962 and 1964 and by two representatives in the 1968 general assembly. The court found the "Negro Center Township population" to be sufficiently large to elect two representatives and one senator if the ghetto tracts "were specific single member legislative districts" in Marion County. 305 F. Supp., at 1385. From this data the court found gross inequity of representation, as determined by residence of legislators, between Washington Township and tract 220 on the one hand and Center Township and the Center Township ghetto area on the other.

The court also characterized Marion County's general assembly delegation as tending to coalesce and take common positions on proposed legislation. This was "largely the result of election at large from a common constituency, and obviates representation of a substantial, though minority, interest group within that common constituency." *Ibid.* Related findings were that, as a rule, a candidate could not be elected in Marion County unless his party carried the election;[11] county political organizations had substantial influence on the selection and election of assembly candidates (an influence that would be diminished by single-member districting), as well as upon the actions of the county's delegation in the assembly; and that at large elections made it difficult for the conscientious voter to make a rational selection.

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[10] See Appendix to opinion, p. —.

The court's conclusions of law on the merits may be summarized as follows:

1. There exists within Marion County an identifiable racial element, "the Negro residents of the Center Township ghetto," with special interests in various areas of

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[11] A striking but typical example of the importance of party affiliation and the "winner-take-all" effect is shown by the 1964 House of Representatives election.

Democrats	*Votes*	*Republicans*	*Votes*
Neff	151,822	Cox	144,336
Bridwell	151,756	Hadley	144,235
Murphy	151,746	Baker	144,032
Dean	151,702	Burke	143,989
Creedon	151,573	Borst	143,972
Jones	151,481	Madinger	143,918
DeWitt	151,449	Clark	143,853
Logan	151,360	Bosma	143,810
Roland	151,343	Brown	143,744
Walton	151,282	Durnil	143,588
Huber	151,268	Gallagher	143,553
Costello	151,153	Cope	143,475
Fruits	151,079	Elder	143,436
Lloyd	150,862	Zerfas	143,413
Ricketts	150,797	Allen	143,369

Though nearly 300,000 Marion County voters cast nearly 4½ million votes for the House, the high and low candidates within each party varied by only about a thousand votes. And, as these figures show, the Republicans lost every seat though they received 48.69% of the vote. Exhibit 10.

substantive law, diverging significantly from interests of nonresidents of the ghetto.[12]

2. The voting strength of this racial group has been minimized by Marion County's multi-member senate and house district because of the strong control exercised by political parties over the selection of candidates, the inability of the Negro voters to assure themselves the opportunity to vote for prospective legislators of their choice and the absence of any particular legislators who were accountable for their legislative record to Negro voters.

3. Party control of nominations, the inability of voters to know the candidate and the responsibility of legislators to their party and the county at large make it difficult for any legislator to diverge from the majority of his delegation and to be an effective representative of minority ghetto interests.

4. Although each legislator in Marion County is arguably responsible to all the voters, including those in the ghetto, "[p]artial responsiveness of all legislators is [not] . . . equal [to] total responsiveness and the informed concern of a few specific legislators." [13]

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[12] "The first requirement implicit in Fortson v. Dorsey and Burns v. Richardson, that of an identifiable racial or political element within that multi-member district, is met by the Negro residents of the Center Township Ghetto. These Negro residents have interests in areas of substantive law such as housing regulations, sanitation, welfare programs (aid to families with dependent children, medical care, etc.), garnishment statutes, and unemployment compensation, among others, which diverge significantly from the interests of nonresidents of the Ghetto." 305 F. Supp., at 1386.

[13] *Ibid.* The District Court implicitly, if not expressly, rejected the testimony of defendants' witnesses, including a professor of political science, to the effect that Marion County's problems and all its voters would be better served by a delegation sitting and voting as a team and responsible to the district at large, than by a delegation elected from single-member districts and split into groups representing special interests.

5. The apportionment statutes of Indiana as they relate to Marion County operate to minimize and cancel out the voting strength of a minority racial group, namely Negroes residing in the Center Township ghetto, and to deprive them of the equal protection of the laws.

6. As a legislative district, Marion County is large as compared with the total number of legislators, it is not subdistricted to insure distribution of the legislators over the county and comprises a multi-member district for both the house and the senate. (See *Burns* v. *Richardson,* 384 U. S. 73, 88 (1966).)

7. To redistrict Marion County alone would leave impermissible variations between Marion County districts and other districts in the State. Statewide redistricting was required, and it could not await the 1970 census figures estimated to be available within a year.

8. It may not be possible for the Indiana general assembly to comply with the state constitutional requirement prohibiting crossing or dividing counties for senatorial apportionment [14] and still meet the requirements of the Equal Protection Clause adumbrated in recent cases.[15]

9. Plaintiff Walker's claim as a Negro voter resident of Lake County that he was discriminated against because Lake County Negroes could vote for only 16 assemblymen while Marion County Negroes could vote for 23 was deemed untenable. In his second capacity, as a general voter in Lake County, Walker "probably has received less effective representation" than Marion County voters because "he votes for fewer legislators and, therefore, has fewer legislators to speak for him," and, since

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[14] Article 4, § 6, of the Indiana Constitution provides:

"A Senatorial or Representative District, where more than one county shall constitute a district, shall be composed of contiguous counties; *and no county, for Senatorial apportionment, shall ever be divided.*" (Emphasis added.)

[15] See part VII, *infra.*

in theory voting power in multi-member districts does not vary inversely to the number of voters, Marion County voters had greater opportunity to cast tie-breaking or "critical" votes. But the court declined to hold that the latter ground had been proven, absent more evidence concerning Lake County.[16] In this respect consideration of Walker's claim was limited to that to be given the uniform districting principle in reapportioning the Indiana general assembly.[17]

Turning to the proper remedy, the court found redistricting of Marion County essential. Also, although recognizing the complaint was directed only to Marion County, the court thought it must act on the evidence indicating that the entire State required reapportionment.[18] Judgment was withheld in all respects, however, to give the State until October 1, 1969, to enact legislation remedying the improper districting and malapportionment found to exist by the court.[19] In so doing the court thought the State "might wish to give consideration to certain principles of legislative apportionment brought out at the trial in these proceedings." *Id.*, at 1391. First, the court eschewed any indication that Negroes living in the ghetto were entitled to any certain number of legislators—districts should be drawn with an eye that is color blind, but neither would sophisticated gerrymandering be countenanced. Second, the legislature was advised to keep in mind the theoretical advantage inhering in voters in multi-member districts, that is, their theoretical opportunity to cast more deciding votes in any legislative election. Referring to the testimony that bloc-voting, multi-member delegations have disproportionately more power than single-member districts, the court thought that "the testimony has application here." Also, "as each member of the bloc delegation is responsible to the voter majority who elected the whole, each Marion County voter has a greater voice in the legislature, having more legislators to speak for him than does a comparable voter" in a single-member district. Single-member districts, the court thought, would equalize voting power among the districts as well as avoiding diluting polictical or racial groups located in multi-member districts. The court therefore recommended that the general assembly give consideration to the uniform district principle in making its apportionment.[20]

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[16] "In his second status, we find that plaintiff Walker is a voter of Indiana who resides outside Marion County. Applying the uniform district principle, discussed *infra* in the remedy section, we find that he probably has received less effective representation than Marion County voters. It has been shown that he votes for fewer legislators and, therefore, has fewer legislators to speak for him. He also, theoretically, casts fewer critical votes than Marion County voters, but we decline to so hold in the absence of sufficient evidence as to other factors such as bloc and party voting in Lake County. We hold that, in the absence of stronger evidence of dilution, his remedy is limited to the consideration which should be given to the uniform district principle in any subsequent reapportionment of the Indiana General Assembly." 305 F. Supp., at 1390.

[17] The court found a failure of proof on behalf of plaintiff Hotz, a resident of the white suburban belt, and on behalf of plaintiff Allan, an independent voter. Two other plaintiffs were entitled to no relief, plaintiff Chavis because he resided outside the Center Township ghetto and plaintiff Ramsey because he failed to show that he was a resident of that area. Only plaintiff Mason Bryant, in addition to the qualified recognition given Walker, was found to have standing to sue and to be entitled to the relief prayed for.

[18] See part VII, *infra*.

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[19] The State appealed here following this opinion. Since at that time no judgment had been entered and no injunction had been granted or denied, we do not have jurisdiction of that appeal and it is therefore dismissed. *Gunn* v. *University Committee*, 399 U. S. 383 (1970).

[20] The trial court's discussion of this subject may be found in 305 F. Supp., at 1391–1392.

On October 15, the court judicially noticed that the Indiana general assembly had not been called to redistrict and reapportion the State. Following further hearings and examination of various plans submitted by the parties, the court drafted and adopted a plan based on the 1960 census figures. With respect to Marion County, the court followed plaintiff's suggested scheme, which was said to protect "the legally cognizable racial minority group against dilution of its voting strength." *Chavis* v. *Whitcomb*, 307 F. Supp. 1362, 1365 (SD Ind. 1969). Single-member districts were employed throughout the State, county lines were crossed where necessary, judicial notice was taken of the location of the nonwhite population in establishing district lines in metropolitan areas of the State and the court's plan expressly aimed at giving "recognition to the cognizable racial minority group whose grievance lead [*sic*] to this litigation." *Id.*, at 1366.

The court enjoined state officials from conducting any elections under the existing apportionment statutes and ordered that the 1970 elections be held in accordance with the plan prepared by the court. Jurisdiction was retained to pass upon any future claims of unconstitutionality with respect to any future legislative apportionments adopted by the State.[21]

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[21] The Court also provided for the possibility that the legislature would fail to redistrict in time for the 1972 elections:

"The Indiana constitutional provision for staggering the terms of senators, so that one-half of the Senate terms expire every two years, is entirely proper and valid and would be mandatory in a legislatively devised redistricting plan.

"However, the plan adopted herein is provisional in nature and probably will be applicable for only the 1970 election and the subsequent 2-year period. This is true since the 1970 census will have been completed in the interim, and the legislature can very well redistrict itself prior to the 1972 election. On the other hand, it is conceivable that the legislature may fail to redistrict before

Appeal was taken following the final judgment by the three-judge court, we noted jurisdiction, 397 U. S. 984 (1970), and the State's motion for stay of judgment was granted pending our final action on this case, 396 U. S. 1055 (1970), thus permitting the 1970 elections to be held under the existing apportionment statutes declared unconstitutional by the District Court. On June 1, 1971, we were advised by the parties that the Indiana Legislature had passed, and the governor had signed, new apportionment legislation soon to become effective for the 1972 elections and that the new legislation provides for single-member house and senate districts throughout the State, including Marion County.

II

With the 1970 elections long past and the appearance of new legislation abolishing multi-member districts in Indiana, the issue of mootness emerges. Neither party deems the case mooted by recent events. Appellees, plaintiffs below, urge that if the appeal is dismissed as moot and the judgment of the District Court is vacated, as is our practice in such cases, there would be no outstanding judgment invalidating the Marion County multi-member district and that the new apportionment legislation would be in conflict with the state constitutional provision forbidding the division of Marion County for the purpose of electing senators. If the new senatorial districts were invalidated in the state courts in this respect, it is argued that the issue involved in the present litigation would simply reappear for decision.

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the 1972 election. In such event, all fifty senatorial seats shall be up for election every two years until such time as the legislature properly redistricts itself. It will then properly be the province of the legislature in redistricting to determine which senatorial districts shall elect senators to 4-year terms and which shall elect senators to 2-year terms to reinstate the staggering of terms." 307 F. Supp., at 1367.

The attorney general for the State of Indiana, for the appellant, taking a somewhat different tack, urges that the issue of the Marion County multi-member district is not moot since the District Court has retained jurisdiction to pass on the legality of subsequent apportionment statutes for the purpose, among others, of determining whether the alleged discrimination against a cognizable minority group has been remedied, an issue that would not arise if the District Court erred in invalidating multi-member districts in Indiana.

We agree that the case is not moot and that the central issues before us must be decided. We do not, however, pass upon the details of the plan adopted by the District Court, since that plan in any event would have required revision in light of the 1970 census figures.

III

The line of cases from *Gray* v. *Sanders,* 372 U. S. 368 (1963), and *Reynolds* v. *Sims,* 377 U. S. 533 (1964), to *Kirkpatrick* v. *Preisler,* 394 U. S. 526 (1969), and *Wells* v. *Rockefeller,* 394 U. S. 542 (1969), recognize that "representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies." *Reynolds* v. *Sims,* 377 U. S., at 565. Since most citizens find it possible to participate only as qualified voters in electing their representatives, "[f]ull and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature." *Ibid.* Hence, apportionment schemes "which give the same number of representatives to unequal numbers of constituents," 377 U. S., at 563, unconstitutionally dilute the value of the votes in the larger districts. And hence the requirement that "the seats in both houses of a bicameral state legislature must be apportioned on a population basis." 377 U. S., at 568.

The question of the constitutional validity of multi-member districts has been pressed in this Court since the first of the modern reapportionment cases. These questions have focused not on population-based apportionment but on the quality of representation afforded by the multi-member district as compared with single-member districts. In *Lucas* v. *General Assembly,* 377 U. S. 713 (1964), decided with *Reynolds* v. *Sims,* we noted certain undesirable features of the multi-member district but expressly withheld any intimation "that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective." 377 U. S., at 731, n. 21. Subsequently, when the validity of the multi-member district, as such, was squarely presented, we held that such a district is not *per se* illegal under the Equal Protection Clause. *Fortson* v. *Dorsey,* 379 U. S. 433 (1965); *Burns* v. *Richardson,* 384 U. S. 73 (1966); *Kilgarlin* v. *Hill,* 386 U. S. 120 (1967). See also *Burnette* v. *Davis,* 382 U. S. 42 (1965); *Harrison* v. *Schaefer,* 383 U. S. 269 (1966).[22] That voters in multi-member districts vote for and are represented by more legislators than voters in single-member districts has so far not demonstrated an invidious discrimination against the latter. But we have deemed the validity of multi-member district systems justiciable, recognizing also that they may be subject to challenge where the circumstances of a particular case may "operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Fortson*, 379 U. S., at 439, and *Burns*, 384 U. S., at 88. Such a tendency, we have said, is enhanced when the district is large and elects a substantial proportion of the seats in either house of a bicameral legislature, if it is multi-membered for both

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[22] In *Fortson,* the Court reversed a three-judge District Court which found a violation of the Equal Protection Clause in that voters in single-member districts were allowed to "select their own senator" but that voters in multimember districts were not. The statutory scheme in *Fortson* provided for subdistricting within the county, so that each subdistrict was the residence of exactly one senator. However, each senator was elected by the county at large. The Court said, "Each [sub]district's senator must be a resident of that [sub]district, but since his tenure depends upon the county-wide electorate he must be vigilant to serve the interests of all the people in the county, and not merely those of people in his home [sub]district; thus in fact he is the county's and not merely the [sub]district's senator." 379 U. S., at 438. The question of whether the scheme "operate[d] to minimize or cancel out the voting

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strength of racial or political elements of the voting population" was not presented.

In *Burnette*, we summarily affirmed a three-judge District Court ruling, 245 F. Supp. 241, which upheld a multi-member district consisting of the city of Richmond, Va., and suburban Henrico County over the objections of both urban Negroes and suburban whites. Since the urban Negroes did not appeal here, the affirmance is of no weight as to them, but as to the suburbanites it represents an adherence to *Fortson*. Similarly, *Harrison* summarily affirmed a District Court reapportionment plan, 251 F. Supp. 450, where multi-member districts in Wyoming were held necessary to keep county splitting at a minimum.

Burns vacated a three-judge court decree which required single-member districts except in extraordinary circumstances. The Court in *Burns* noted that "the demonstration that a particular multi-member scheme effects an invidious result must appear from evidence in the record." 384 U. S., at 88.

In *Kilgarlin*, the Court affirmed, *per curiam*, a district court ruling

> "insofar as it held that appellants had not proved their allegations that [the Texas House of Representatives reapportionment plan] was a racial or political gerrymander violating the Fourteenth Amendment, that it unconstitutionally deprived Negroes of their franchise and that because of its utilization of single member, multi-member and floterial districts it was an unconstitutional 'crazy quilt.'" 386 U. S., at 121.

houses of the legislature or if it lacks provision for at-large candidates running from particular geographical subdistricts, as in *Fortson*. *Burns*, 384 U. S., at 88. But we have insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements. We have not yet sustained such an attack.

IV

Plaintiffs level two quite distinct challenges to the Marion County district. The first charge is that any multi-member district bestows on its voters several unconstitutional advantages over voters in single-member districts or smaller multi-member districts. The other allegation is that the Marion County district, on the record of this case, illegally minimizes and cancels out the voting power of a cognizable racial minority in Marion County. The District Court sustained the latter claim and considered the former sufficiently persuasive to be a substantial factor in prescribing uniform, single-member districts as the basic scheme of the court's own plan. See 307 F. Supp., at 1366.

In asserting discrimination against voters outside Marion County, plaintiffs recognize that *Fortson*, *Burns*, and *Kilgarlin* proceeded on the assumption that the dilution of voting power suffered by a voter who is placed in a district 10 times the population of another is cured by allocating 10 legislators to the larger district instead of the one assigned to the smaller district. Plaintiffs challenge this assumption at both the voter and legislator level. They demonstrate mathematically that in theory voting power does not vary inversely with the size of the district and that to increase legislative seats in proportion to increased population gives undue voting power to the voter in the multi-member district since he has more chances to determine election outcomes than does the voter in the single-member district. This consequence obtains wholly aside from the quality or effectiveness of representation later furnished by the successful candidates. The District Court did not quarrel with plaintiffs' mathematics, nor do we. But like the District Court we note that the position remains a theoretical one[23] and, as plaintiffs' witness conceded, knowingly

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[23] The mathematical backbone of this theory is as follows: In a population of n voters, where each voter has a choice between two alternatives (candidates), there are 2^n possible voting combinations. For example, with a population of three voters, A, B, and C, and two candidates, X and Y, there are eight combinations:

	A	*B*	*C*
#1.	X	X	X
#2.	X	X	Y
#3.	X	Y	X
#4.	X	Y	Y
#5.	Y	X	X
#6.	Y	X	Y
#7.	Y	Y	X
#8.	Y	Y	Y

The theory hypothesizes that the true test of voting power is the ability to cast a tie-breaking, or "critical" vote. In the population of three voters as shown above, any voter can cast a critical vote in four situations; in the other four situations, the vote is not critical since it cannot change the outcome of the election. For example, C can cast a tie-breaking vote only in situations 3, 4, 5, and 6. The number of combinations in which a voter can cast a tie-breaking vote is $2 \cdot \dfrac{(n-1)!}{\dfrac{n-1}{2}! \cdot \dfrac{n-1}{2}!}$, where n is the number of voters. Dividing this result (critical votes) by 2^n (possible combinations), one arrives at that fraction of possible combinations in which a voter can cast a critical vote. This is the theory's measure of voting power. In District K with three voters, the fraction is $\frac{4}{8}$, or 50%. In District L with nine voters, the fraction is $\frac{140}{512}$, or 28%. Conventional wisdom would give District K one representative and District L three. But under the avoids and does "not take into account any political or other factors which might affect the actual voting power of the residents, which might include party affiliation, race, previous voting characteristics or any other factors which go into the entire political voting situation."[24] The real-life impact of multi-member districts on individual voting power has not been sufficiently demonstrated, at least on this record, to warrant departure from prior cases.

The District Court was more impressed with the other branch of the claim that multi-member districts inherently discriminate against other districts. This was the assertion that whatever the individual voting power of Marion County voters in choosing legislators may be, they nevertheless have more effective representation in the Indiana general assembly for two reasons. First, each voter is represented by more legislators and therefore, in theory at least, has more chances to influence critical legislative votes. Second, since multi-member delegations are elected at large and represent the voters of the entire district, they tend to vote as a bloc, which is tantamount to the district having one representative with several votes.[25] The District Court did not squarely

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theory, a voter in District L is not ⅓ as powerful as the voter in District K, but more than half as powerful. District L deserves only two representatives, and by giving it three the state causes voters therein to be overrepresented. For a fuller explanation of this theory, see Banzhaf, Multi-Member Electoral Districts—Do They Violate the "One Man, One Vote" Principle, 75 Yale L. J. 1309 (1966).

[24] T. 39. Plaintiffs' brief in this Court recognizes the issue: "The obvious question which the foregoing presentation gives rise to is that of whether the fact that a voter in a large multi-member district has a greater mathematical chance to cast a crucial vote has any practical significance." Brief of Appellees [Plaintiffs] p. 14.

[25] Cf. Banzhaf, Weighted Voting Doesn't Work: A Mathematical Analysis, 19 Rutgers L. Rev. 317 (1965).

sustain this position,[26] but it appears to have found it sufficiently persuasive to have suggested uniform districting to the Indiana Legislature and to have eliminated multi-member districts in the court's own plan redistricting the State. See 307 F. Supp., at 1368–1383.

We are not ready, however, to agree that multi-member districts, wherever they exist, overrepresent their voters as compared with voters in single-member districts, even if the multi-member delegation tends to bloc-voting. The theory that plural representation itself unduly enhances a district's power and the influence of its voters remains to be demonstrated in practice and in the day-to-day operation of the legislature. Neither the findings of the trial court nor the record before us sustains it, even where bloc voting is posited.

In fashioning relief, the three-judge court appeared to embrace the idea that each member of a bloc-voting delegation has more influence than legislators from a single-member district. But its findings of fact fail to deal with the actual influence of Marion County's delegation in the Indiana legislature. Nor did plaintiffs' evidence make such a showing. That bloc-voting tended to occur is sustained by the record, and defendant's own witness thought it was advantageous for Marion County's delegation to stick together. But nothing demonstrates that senators and representatives from Marion County counted for more in the legislature than members from single-member districts or from smaller multi-member districts. Nor is there anything in the court's findings indicating that what might be true of Marion County is also true of other multi-member districts in Indiana or is true of multi-member districts generally. Moreover, Marion County would have no less advantage, if advantage there is, if it elected from individual districts and the elected representatives demonstrated the same bloc-voting tendency, which may also develop among legislators representing single-member districts widely scattered throughout the State.[27] Of course it is advantageous to start with more than one vote for a bill. But nothing before us shows or suggests that any legislative skirmish affecting the State of Indiana or Marion County in particular would have come out differently had Marion County been subdistricted and its delegation elected from single-member-districts.

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[26] It is apparent that the District Court declined to rule as a matter of law that a multi-member district was *per se* illegal as giving an invidious advantage to multi-member district voters in single-member districts or smaller multi-member districts. See 305 F. Supp., at 1391–1392.

IV

Rather than squarely finding unacceptable discrimination against out-state voters in favor of Marion County voters, the trial court struck down Marion County's multi-member district because it found the scheme worked invidiously against a specific segment of the county's voters as compared with others. The court identified an area of the city as a ghetto, found it predominantly inhabited by poor Negroes with distinctive substantive-law interests and thought this group unconstitutionally underrepresented because the proportion of legislators with residences in the ghetto elected from 1960 to 1968 was less than the ghetto's proportion of the population, less than the proportion of legislators elected from Washington Township, a less populous district, and less than the ghetto would likely have elected had the county consisted of single-member districts.[28] We find major deficiencies in this approach.

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[27] The so-called urban-rural division has been much talked about. Antagonistic bloc voting by the two camps may occur but it has perhaps been overemphasized. See White & Thomas, Urban and Rural Representation and State Legislative Apportionment, 17 W. Pol. Q. 724 (1964). Legislation dealing with uniquely urban problems may be routinely approved when urban delegations are in agreement but encounter insuperable difficulties when the delegations are split internally. See Kovach, Some Lessons of Reapportionment, 37 The Reporter 26, 31 (Sept. 21, 1967).

First, it needs no emphasis here that the Civil War Amendments were designed to protect the civil rights of Negroes and that the courts have been vigilant in scrutinizing schemes allegedly conceived or operated as purposeful devices to further racial discrimination. There has been no hesitation in striking down those contrivances that can fairly be said to infringe on Fourteenth Amendment rights. *Gomillion* v. *Lightfoot,* 364 U. S. 339 (1960); *Sims* v. *Baggett,* 247 F. Supp. 96 (MD Ala. 1965); *Smith* v. *Paris,* 257 F. Supp. 901 (MD Ala. 1966), aff'd, 386 F. 2d 979 (CA5 1967). See also *Allen* v. *Board of Elections,* 393 U. S. 544 (1969). But there is no suggestion here that Marion County's multi-member district, or similar districts throughout the State, were conceived or operated as purposeful devices to further racial or economic discrimination. As plaintiffs concede, "there was no basis for asserting that the legislative districts in Indiana were designed to dilute the vote of minorities." Brief of Appellees, pp. 28–29. Accordingly, the circumstances here lie outside the reach of decisions such as *Sims* v. *Baggett, supra.*

Nor does the fact that the number of ghetto residents who were legislators was not in proportion to ghetto population satisfactorily prove invidious discrimination absent evidence and findings that ghetto residents had less opportunity than did other Marion County residents to participate in the political processes and to elect legislators of their choice. We have discovered nothing in the record or in the court's findings indicating that poor Negroes were not allowed to register or vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence purport to show or the court to find that inhabitants of the ghetto were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats.[29] It appears reasonably clear that the Republican Party won four of the five elections from 1960 to 1968, that Center Township ghetto voted heavily Democratic and that ghetto votes were critical to Democratic Party success. Although we cannot be sure of the facts since the court ignored the question, it seems unlikely that the Democratic Party could afford to overlook the ghetto in slating its candidates.[30] Clearly, in 1964—the one election which the

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[28] See the table at Appendix, *infra.*

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[29] It does not appear that the Marion County multi-member district always operated to exclude Negroes or the poor from the legislature. In the five general assemblies from 1960-1968, the county's Center Township ghetto had one senator and four representatives. The remainder of the Township, which includes a white ghetto, elected one senator and eight representatives. Census tract 220, inhabited predominantly by Negroes but having different economic and social characteristics according to the trial court, elected one senator and five representatives. Appendix, *infra*, p. —. Plaintiffs' evidence indicated that Marion County as a whole elected two Negro senators and seven representatives in those years. Plaintiffs' Exhibit 10.

[30] Plaintiffs' Exhibit 10 purported to list the names and race of both parties' general assembly candidates from 1920 through 1968. For the 1960-1968 period which concerned the District Court, the exhibit purported to show that the Democratic Party slated one Negro representative in 1960; one in 1962; one senator and two representatives in 1964; three representatives in 1966; and one senator and two representatives in 1968. The Republican Party slated one Negro senator in 1960; two representatives in 1966; and three representatives in 1968. The racial designations on the exhibit, however, were excluded as hearsay.

Plaintiffs' Brief (p. 23) indicates that in the 1970 elections:

". . . one of the major political parties in Marion County held district 'mini-slating conventions' for purposes of determining its legislative candidates. All of the slated candidates were subsequently nominated in the primary. Black candidates filed in the slating

Democrats won— the party slated and elected one senator and one representative from Center Township ghetto as well as one senator and four representatives from other

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conventions in six of the fifteen Marion County 'districts' including the five which contain parts of the ghetto area. Only two black candidates were slated and nominated including one in the district which contains only a very small part of the ghetto area where the black candidate overwhelmingly defeated the white candidate in a head-on race notwithstanding a very substantial white voting majority. In a district that was almost entirely ghetto a white candidate won almost all of the vote in a head-on race against a black candidate who campaigned primarily on the basis of skin-color. All five of the candidates in the 'ghetto districts,' however, avowed a substantial commitment to the substantive interests of black people and the poor."

The record shows that plaintiff Chavis was slated by the Democratic Party and elected to the state senate in 1964. Exhibit 10. Also, plaintiffs Ramsey and Bryant were both slated by the same party as candidates for the House of Representatives in 1968 but were defeated in the general election. *Ibid.;* see also T. 131 (Ramsey), T. 133 (Bryant).

One of plaintiffs' witnesses, an attorney and political figure in the Republican Party, testified as follows:

"Q. In your experience, Mrs. Allen, aren't tickets put together by party organization to appeal [to] the various interest groups throughout Marion County?

"A. Yes.

"Q. Among these interest groups, are economic groups, racial groups and others?

"A. Yes.

. . . . .

"Q. I show you exhibit 5B that is in evidence, showing the location of the elected Republican representatives' homes at the time they filed in the party primary, does it to you somehow reflect an interest in making an appeal to each conceivable faction in the family, in the county area, each geographical interest?

"A. Yes, it does, if I can explain.

"Q. Yes, you may.

"A. Back in 1966, as I stated, we had a real primary fight and at the time we selected our candidates in the primary Republican Action Committee was not real, real strong in some geographical areas, and we felt that necessary to come up with a 15 man slate, parts of Center Township and two representatives from census tract 220, which was within the ghetto area described by plaintiff.[31] Nor is there any indication that the party failed to slate candidates satisfactory to the ghetto in other years. Absent evidence or findings we are not sure, but it seems reasonable to infer that had the Democrats won all of the elections or even most of them, the ghetto would have had no justifiable complaints about representation. The fact is, however, that four of the five elections were won by Republicans, which was not the party of the ghetto and which would not always slate ghetto candidates—although in 1962 it nominated and elected one representative and in 1968 two representatives from that area.[32]

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many of the people who lived in Center Township including myself did not feel ready to run for public office and therefore there was a hiatus in Center Township residents. However, many of the Washington Township residents, I believe at least two Washington Township residents had a number of family and historical ties in this Center Township Area, even though they did not live there and to the best of the Committee's ability they tried to achieve racial, geographical, economical and social diversity on the ticket. I can't say they were entirely successful, but they made a real good attempt and this is a result of their attempts.

"Q. And the real hard driving effort to put the Action Committees through did take place by the residents of Center Township; did it not?

"A. It was an over-all drive. Center Township, having the population it has, could not be ignored." T. 145–148.

Plaintiff's lawyer was at the time of the trial the Marion County Democratic chairman, T. 256; plaintiff Chavis was a ward chairman and a longtime precinct committeeman, T. 77.

[31] See Appendix, *infra*.

[32] See Appendix, *infra*. In addition, the Republicans nominated and elected one senator (1960), and three representatives (1960, 1966, 1968) from census tract 220, and four representatives (three in 1962, one in 1966) from the nonghetto area of Center Township. *Ibid*.

Although plaintiffs asserted it, there was no finding by the District Court that Republican legislators residing in the ghetto were not representative of the area or had failed properly to represent ghetto interests in the general assembly.

If this is the proper view of this case, the failure of the ghetto to have legislative seats in proportion to its population emerges more as a function of losing elections than of built-in bias against poor Negroes. The voting power of ghetto residents may have been "cancelled out" as the District Court held, but this seems a mere euphemism for political defeat at the polls.

On the record before us plaintiffs' position comes to this: that although they have equal opportunity to participate in and influence the selection of candidates and legislators, and although the ghetto votes predominantly Democratic and that party slates candidates satisfactory to the ghetto, invidious discrimination nevertheless results when the ghetto, along with all other Democrats, suffers the disaster of losing too many elections. But typical American legislative elections are district-oriented, head-on races between candidates of two or more parties. As our system has it, one candidate wins, the others lose. Arguably the losing candidates' supporters are without representation since the men they voted for have been defeated; arguably they have been denied equal protection of the laws since they have no legislative voice of their own. This is true of both single-member *and* multi-member districts. But we have not yet deemed it a denial of equal protection to deny legislative seats to losing candidates, even in those so-called "safe" districts where the same party wins year after year.

Plainly, the District Court saw nothing unlawful about the impact of typical single-member district elections. The court's own plan created districts giving both Republicans and Democrats several predictably safe general assembly seats, with political, racial or economic minorities in those districts being "unrepresented" year after year. But similar consequences flowing from Marion County multi-member district elections were viewed differently. Conceding that all Marion County voters could fairly be said to be represented by the entire delegation, just as each voter in a single-member district by the winning candidate, the District Court thought ghetto voters' claims to the partial allegiance of eight senators and 15 representatives was not equivalent to the undivided allegiance of one senator and two representatives; nor was the ghetto voters' chance of influencing the election of an entire slate as significant as the guarantee of one ghetto senator and two ghetto representatives.[33] As the trial court saw it, ghetto voters could not be adequately and equally represented unless some of Marion County's general assembly seats were reserved for ghetto residents serving the interests of the ghetto majority. But are poor Negroes of the ghetto any more underrepresented than poor ghetto whites who also voted Democratic and lost, or any more discriminated against than other interest groups or voters in Marion County with allegiance to the Democratic Party, or, conversely, any less represented than Republican areas or voters in years of Republican defeat? We think not. The mere fact that one interest group or another concerned with the outcome of Marion County elections have found them-

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[33] The comparative merits of the two approaches to metropolitan representation has been much mooted and is still in contention. See the authorities cited in n. 38, *infra*, particularly the piece by Kovach and the series of studies by Collins, Dauer, David, Lacy, and Mauer. And, of course, witnesses in the trial court differed on this very issue. *E. g.*, R. 209–214, 223–229, 235–238, 256–258. David and Eisenberg in their study, *infra* n. 38, concluded that the case for rigid insistence on single-member districting has not been proved. They would prefer a system of small multi-member districts in metropolitan areas to either the larger multi-member district or the single-member district, thereby minimizing the acknowledged shortcomings of each. More generally, still in suspense is definitive judgment about the long-range impact of voting systems and malapportionment on legislative output. Sokolow, After Reapportionment: Numbers or Policies, 19 W. Pol. Q. 21 (1966); Dye, Politics, Economics, and the Public 260–277 (1966); Lockard, The Politics of State and Local Government 290–293 (1969).

selves outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, as here, there is no indication that this segment of the population is being denied access to the political system.

There is another gap in the trial court's reasoning. As noted by the court, the interest of ghetto residents in certain issues did not measurably differ from that of other voters. Presumably in these respects Marion County's assemblymen were satisfactorily representative of the ghetto. As to other matters, ghetto residents had unique interests not necessarily shared by others in the community and on these issues the ghetto was invidiously underrepresented absent their own legislative voice to further their own policy views.

Part of the difficulty with this conclusion is that the findings failed to support it. Plaintiffs' evidence purported to show disregard for the ghetto's distinctive interests; defendants claimed quite the contrary. We see nothing in the findings of the District Court indicating recurring poor performance by Marion County's delegation with respect to Center Township ghetto, nothing to show what the ghetto's interests were in particular legislative situations and nothing to indicate that the outcome would have been any different if the 23 assemblymen had been chosen from single-member districts. Moreover, even assuming bloc voting by the delegation contrary to the wishes of the ghetto majority, it would not follow that the Fourteenth Amendment had been violated unless it is invidiously discriminatory for a county to elect its delegation by majority vote based on party or candidate platforms and so to some extent predetermine legislative votes on particular issues. Such tendencies are inherent in government by elected representatives; and surely elections in single-member districts visit precisely the same consequences on the supporters of losing candidates whose views are rejected at the polls.

V

The District Court's holding, although on the facts of this case limited to guaranteeing one racial group representation, is not easily contained. It is expressive of the more general proposition that any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living in an area sufficiently compact to constitute a single-member district.[34] This approach would make it difficult to reject claims of Democrats, Republicans, or members of any political organization in Marion County who live in what would be safe districts in a single-member district system but who in one year or another, or year after year, are submerged in a one-sided multi-member district vote.[35] There are also union oriented workers, the university community, religious or ethnic groups occupying identifiable areas of our heterogeneous cities and urban areas. Indeed, it would be difficult for a great many, if not most, multi-member districts to survive analysis under the District Court's view unless combined with some voting arrangement such as proportional representation or cumulative voting aimed at providing representation for minority parties or interests.[36] At the very least, affirmance of the District Court would spawn endless litigation concerning the multi-member district systems now widely employed in this country.[37]

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[34] Interestingly enough, in *Wright* v. *Rockefeller*, 376 U. S. 52 (1964), challenge was to a single-member district plan with districts allegedly drawn on racial lines and designed to limit Negroes to voting for their own candidates in safe Negro districts. We rejected the challenge for failure of proof, but noted in passing that ". . . some of these voters . . . would prefer a more even distribution of minority groups among the four congressional districts, but others, like the intervenors in this case, would argue strenuously that the kind of districts for which appellants contended would be undesirable and, because based on race or place of origin, would themselves be unconstitutional." 376 U. S., at 57–58.

[35] Plaintiffs' final arguments in the District Court asserted political as well as racial and economic discrimination in the workings of the Marion County district, in that the "political minority," whether Republicans or Democrats, is "always shut out" when the opposing party wins. T. 254. See n. 11, *supra*.

We are not insensitive to the objections long voiced to multi-member district plans.[38] Although not as preva-

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[36] For discussions of voting systems *designed* to achieve minority representation, see Dixon, *infra,* n. 38, at 516–527; Black, The Theory of Elections in Single-member Constituencies, 15 Can. J. of Economics and Pol. Sci. 158 (1949); Silva, *infra,* n. 38, at 744 *et seq.;* Bedford, The Faces of Justice (1961); Lakeman and Lambert, Voting in Democracies (1959); Blair, Cumulative Voting: An Effective Electoral Device in Illinois Politics, 45 Ill. Studies in the Social Sciences (1960).

[37] As of November 1970, 46% of the upper houses and 62% of the lower houses in the State contained some multi-member districts. National Municipal League, Apportionment in the Nineteen Sixties (1970). In 1955, it was reported that the figures were 33% and 75%, respectively. Klain, A New Look at the Constituencies, 49 Am. Pol. Sci. Rev. 1105 (1955). Though the overall effect of the reapportionment cases on this phenomenon is necessarily somewhat speculative, there is no doubt that some States switched to multi-member districts as a result of those decisions. Prior to the decisions, for example, Vermont's lower house was composed entirely of single-member districts. *Id.,* at 1109. This resulted in the colorful situation of one representative for a town of 33,155 and another for a town of 38 in 1962. National Municipal League, Apportionment in the Nineteen Sixties, at b. Reapportioned and redistricted in light of *Reynolds,* Vermont's lower house now has 36 multi-member and 36 single-member districts. *Buckley* v. *Hoff,* 243 F. Supp. 873 (Vt. 1965). Reapportionment has also been credited with abolishing Maryland's tradition of single-member districts in its senate. Burdette, Maryland Reapportionment, in Apportionment in The Nineteen Sixties, *supra.*

[38] The relative merits of multi-member and single-member plans have been much debated and the general preference for single-member districts has not gone unchallenged. For representative treatment of the subject see:

Dixon, Democratic Representation: Reapportionment in Law and Politics, 461–463, 470–472, 476–490, 503–507 (1968); David and lent as they were in our early history, they have been with us since colonial times and were much in evidence both before and after the adoption of the Fourteenth Amendment.[39] Criticism is rooted in their winner-take-

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Eisenberg, State Legislative Redistricting: Major Issues in the Wake of Judicial Decision (1962); Barnett, Unitary-Multiple Election Districts, 39 Am. Pol. Sci. Rev. 65 (1945); Silva, Compared Values of the Single- and the Multi-member Legislative District, 17 W. Pol. Q. 504 (1964); Hamilton, Legislative Constituencies: Single-member Districts, Multi-member Districts, and Floterial Districts, 20 W. Pol. Q. 321 (1967) (includes a discussion of districting in Indiana); Silva, Relation of Representation and the Party System to the Number of Seats Apportioned to a Legislative District, 17 W. Pol. Q. 742 (1964); Lindquist, Socioeconomic Status and Political Participation, 17 W. Pol. Q. 608 (1964); Klain, A New Look at the Constituencies: The Need for a Recount and a Reappraisal, 49 Am. Pol. Sci. Rev. 1105 (1955); Kovach, Some Lessons of Reapportionment, Reporter Magazine, Sept. 21, 1967, 26; and Collins, Dauer, David, Lacy, and Mauer, Evolving Issues and Patterns of State Legislative Redistricting in Large Metropolitan Areas (1966).

Interesting material with respect to the relative merits of single- and multi-member districts may be found in the congressional debates surrounding the passage in 1842 of the statute requiring representatives to be elected in single-member districts. See n. 39, *infra*. Though the racial considerations present here were, not surprisingly, absent in these pre-Civil War Amendments debates, the concern voiced by congressmen over the submergence of minorities, bloc voting, and party control shows, at least, that the plaintiffs' apprehensions are not entirely new ones. See, *e. g.*, 11 Cong. Globe 445–448, 452–453, 463–464 (27th Cong., 2d Sess.).

[39] In colonial days. "[m]ultiple districts were the rule, single ones the exception," and "[f]or nearly a century and a half after the Declaration of Independence the American states elected by far the greater part of their lawmakers in multiple constituencies." Klain, A New Look at the Constituencies: The Need for a Recount and a Reappraisal, 49 Am. Pol. Sci. Rev. 1105, 1112, 1113 (1955). Although a trend toward single-member districts began long ago, multiple districts are still much in evidence. See n. 37, *supra*. See also David and Eisenberg, State Legislative Redistricting: Major Issues in the Wake of Judicial Decision 20 (1962); Dixon, Democratic Representation: Reapportionment in Law and Politics 504 (1968).

In 1842, Congress by statute required single-member districts for all aspects, their tendency to submerge minorities and to overrepresent the winning party as compared with the party's state-wide electoral position, a general preference for legislatures reflecting community interests as closely as possible and disenchantment with political parties and elections as devices to settle policy differences between contending interests. The chance of winning or significantly influencing intraparty fights and issue-oriented elections has seemed to some inadequate protection to minorities, political, racial, or economic; rather, their voice, it is said, should also be heard in the legislative forum where public policy is finally fashioned. In our view, however, experience and insight have not yet demonstrated that multi-member districts are inherently

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congressional elections. Act of June 25, 1842, c. 47, § 2, 5 Stat. 491. The substance of the restriction was continued in R. S. § 23 and in apportionment legislation in this century until 1929. In 1941, Congress enacted a law which required that until a State is redistricted in a manner provided by law after decennial reapportionment of the House, representatives were to be elected from the districts prescribed by the law of the State, and that "if any of them are elected from the State at large they shall continue to be so elected," provided that if reapportionment of the House following a census shows that a State is entitled to an increase in the number of representatives, the additional representatives shall be elected at large until the State is redistricted, and if there is a decrease in the number of representatives and the number of districts in the State exceeds the number of representatives newly apportioned, all representatives shall be elected at large. Act of November 15, 1941, c. 740, § 22 (c), 55 Stat. 761, 2 U. S. C. § 2a (c). In 1967, Congress reinstated the single-member district requirement, "except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress." 81 Stat. 581, 2 U. S. C. § 2c. Hawaii was the only State to take advantage of this exception. It has districted for the 92d Congress. Hawaii Rev. Stat. § 12–32.5 (1969 Supp.).

Congress has not purported to exercise Fourteenth Amendment powers to regulate or prohibit multi-member districts in state elections.

invidious and violative of the Fourteenth Amendment. Surely the findings of the District Court do not demonstrate it. Moreover, if the problems of multi-member districts are unbearable or even unconstitutional it is not at all clear that the remedy is a single-member district system with its lines carefully drawn to ensure representation to sizable racial, ethnic, economic or religious groups and with its own capacity for over- and underrepresenting parties and interests and even for permitting a minority of the voters to control the legislature and government of a State. The short of it is that we are unprepared to hold that district-based elections decided by plurality vote are unconstitutional in either single- or multi-member districts simply because the supporters of losing candidates have no legislative seats assigned to them. As presently advised we hold that the District Court misconceived the Equal Protection Clause in applying it to invalidate the Marion County multi-member district.

VI

Even if the District Court was correct in finding unconstitutional discrimination against poor inhabitants of the ghetto, it did not explain why it was constitutionally compelled to disestablish the entire county district and to intrude upon state policy any more than necessary to ensure representation of ghetto interests. The court entered judgment without expressly putting aside on supportable grounds the alternative of creating single-member districts in the ghetto and leaving the district otherwise intact, as well as the possibility that the Fourteenth Amendment could be satisfied by simple requirement that some of the at-large candidates each year must reside in the ghetto. Cf. *Fortson* v. *Dorsey, supra.*

We are likewise at a loss to understand how on the court's own findings of fact and conclusions of law it was justified in eliminating every multi-member district in the State of Indiana. It did not forthrightly sustain the theory that multi-member districts always overrepresent their voters to the invidious detriment of single-member residents. Nor did it examine any multi-member district aside from Marion County for possible intradistrict discrimination.

The remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here the District Court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so.

VII

At the same time, however, we reject defendants' suggestion that the court was wrong in ordering statewide reapportionment. After determining that Marion County required reapportionment, the court concluded that "it becomes clear beyond question that the evidence adduced in this case and the additional apportionment requirements set forth by the Supreme Court call for a redistricting of the entire state as to both houses of the General Assembly." 305 F. Supp., at 1391. This evidence, based on 1960 census figures, showed that Senate district 20, with one senator for 80,496, was overrepresented by 13.68% while district 5, with one senator for 106,790, was underrepresented by 14.52%, for a total variance of 28.20% and a ratio between the largest and smallest districts of 1.327 to 1. The house figures were similar. The variation ranged from one representative for 41,449 in district 39 to one for 53,003 in district 35, for a variance of 24.78% and a ratio of 1.279 to 1.[40] These variations were in excess of, or very nearly equal to, the variation of 25.65% and the ratio of 1.30 to 1 which we held excesssive for state legislatures [41] in *Swann* v. *Adams*, 385 U. S. 440 (1967). Even with this convincing showing of malapportionment, the court refrained from action in order to allow the Indiana Legislature to call a special session for the purpose of redistricting. When the legislature ignored the court's findings and suggestion, it was not improper for the court to order state-wide redistricting, as district courts have done from the time *Reynolds* v. *Sims*, 377 U. S. 533 (1964), and its companion cases were decided.[42] And see *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656, 673 (1964).

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[40] The court was also impressed by the 1967 Indiana Board of Health Vital Statistics population estimates which showed a senate variance of 36.83% and a house variance of 37.30%. It did not base its order on these interim figures, however. See 307 F. Supp. 1362, 1366.

Nor can we accept defendants' argument that the statutory plan was beyond attack because the District Court had held in 1965 that at that time the plan met the

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[41] See also *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969), and *Wells* v. *Rockefeller*, 394 U. S. 542 (1969), in which the Court held that variances of 5.97% and 13.096%, respectively, were impermissible for congressional redistricting.

[42] In redistricting the State, the District Court divided some counties into several districts, and defendants attack this as an unwarranted violation of Indiana Const. Art. 4, § 6, which says "no county, for Senatorial apportionment, shall ever be divided." Defendants concede that "[t]he error . . . is not the *per se* violation" of the constitution, but rather that the court drew its plan "without having meaningfully considered" the dictates of the constitution. Brief for Appellants 49. But the contrary appears to us to be true. The court announced that it "would strive to preserve the integrity of county and township lines" wherever possible, 307 F. Supp., at 1364, though it ultimately concluded that the "difficulty of devising . . . compact and contiguous . . . districts within that framework [of mathematical equality] has in large part precluded preservation of county lines." *Id.*, at 1366. We note that none of the statewide redistricting plans which were submitted for the court's consideration, including those of the house and senate minority leaders and the chairman of the senate majority caucus committee, followed the state constitution in this respect. R. 57–137, 198–228.

"substantial equality" test of *Reynolds*. *Stout* v. *Bottorff,* 249 F. Supp. 488 (SD Ind. 1965). Defendants do not argue that the 1969 variances were acceptable under the *Reynolds* test, which has been considerably refined since that decision, see *Swann* v. *Adams, supra.* Rather, they contend that because *Reynolds* indicated that decennial reapportionment would be a "rational approach" to the problem, a State cannot be compelled to reapportion itself more than once in a 10-year period. Such a reading misconstrues the thrust of *Reynolds* in this respect. Decennial reapportionment was suggested as a presumptively rational method to avoid "daily, monthy, annual or biennial reapportionment" as population shifted throughout the State.[43] Here, the District Court did not order reapportionment as a result of population shifts since the 1965 *Stout* decision, but only because the disparities among districts which were thought to be permissible at the time of that decision had been shown by intervening decisions of this Court to be excessive.

We therefore reverse the judgment of the District Court and remand the case to that court for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE STEWART joins in Part I through VI of the Court's opinion, holding that the multi-member districting scheme here in issue did not violate the Equal Protection Clause of the Fourteenth Amendment. He dissents from Part VII of the Court's opinion for the reasons expressed in his dissenting opinion in *Lucas* v. *Colorado General Assembly,* 377 U. S. 713, 744.

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[43] In any event, the Court was careful to note that "we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable." 377 U. S., at 584.

The following table was included in the trial court's findings:

TABLE NO. 7

	1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*	*14*	*15*	*16*
Residence of Legislators Elected (By Marion County Area)	*1960–69 Average Population*	*1960–69 Avg. Pop. as Percentage of Marion County Average Pop. 1960*	*Senators Elected*						*Senators Elected as Percent of 1960–68 Total*	*Representatives Elected*						*Representatives Elected as Percent of 1960–68 Total*
			60	*62*	*64*	*66*	*68*	*60-68*		*60*	*62*	*64*	*66*	*68*	*60-68*	
Washington Twp. excluding Tract 220	103,615	13.98	3	1	2	1	3	10	47.52	6	2	5	5	5	23	34.33
Census Tract 220	4,866	0.66	1	0	0	0	0	1	4.75	1	0	2	1	1	5	7.46
Center Twp. excluding Ghetto	172,876	23.32	0	0	1	0	0	1	4.75	0	3	4	1	0	8	11.94
Center Twp. Ghetto	132,000	17.81	0	0	1	0	0	1	4.75	0	1	1	0	2	4	5.97
Pike Twp.	11,031	1.49	0	0	0	0	0	0	0	0	0	0	0	1	1	1.49
Wayne Twp.	105,961	14.30	0	0	0	0	0	0	0	1	2	0	2	2	7	10.45
Decatur Twp.	13,755	1.86	0	0	0	0	0	0	0	0	0	0	1	1	2	2.99
Perry Twp.	59,778	8.07	1	0	1	0	2	4	19.01	0	0	1	1	1	3	4.48
Franklin Twp.	8,929	1.21	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lawrence Twp.	49,553	6.69	0	0	1	0	1	2	9.51	2	2	0	3	2	9	13.44
Warren Twp.	78,872	10.64	0	0	0	1	1	2	9.51	1	1	2	1	0	5	7.46
Marion County	741,234	[100%]	5	1	6	2	7	21	[100%]	11	11	15	15	15	67	[100%]

305 F. Supp., at 1383.

SUPREME COURT OF THE UNITED STATES

No. 92.—October Term, 1970

Edgar D. Whitcomb, Governor of the State of Indiana, Appellant, *v.* Patrick Chavis et al.	On Appeal From the United States District Court for the Southern District of Indiana.

[June 7, 1971]

Separate opinion of Mr. Justice Harlan.

Earlier this Term I remarked on "the evident *malaise* among the members of the Court" with prior decisions in the field of voter qualifications and reapportionment. *Oregon* v. *Mitchell,* 400 U. S. 112, 218 (1970) (separate opinion of this writer).

Today's opinions in this and two other voting cases now decided [1] confirm that diagnosis.

I

Past decisions have held that districting in local governmental units must approach equality of voter population "as far as is practicable," *Hadley* v. *Junior College District,* 397 U. S. 50, 56 (1970), and that the "as nearly as is practicable" standard of *Wesberry* v. *Sanders,* 376 U. S. 1, 7–8 (1964), for congressional districting forbade a maximum variation of 6%. *Kirkpatrick* v. *Preisler,* 394 U. S. 526 (1969). Today the Court sustains a local governmental apportionment scheme with a 12% variation. *Abate* v. *Mundt, ante.*

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[1] *Abate* v. *Mundt,* No. 71, *ante,* p. —; *Gordon* v. *Lance,* No. 96, *post,* p. —.

Other past decisions have suggested that multi-member constituencies would be unconstitutional if they could be shown "under the circumstances of a particular case, . . . to minimize or cancel out the voting strength of racial or political elements of the voting population." *Fortson* v. *Dorsey,* 379 U. S. 433, 439 (1965); *Burns* v. *Richardson,* 384 U. S. 73, 88 (1966). Today the Court holds that a three-judge District Court, which struck down an apportionment scheme for just this reason, "misconceived the Equal Protection Clause." *Whitcomb* v. *Chavis, ante,* at 34.

Prior opinions stated that "once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded." *Gray* v. *Sanders,* 372 U. S. 368, 381 (1963); *Hadley* v. *Junior College District,* 397 U. S. 50, 59 (1970). Today the Court sustains a provision that gives opponents of school bond issues half again the voting power of proponents. *Gordon* v. *Lance, post,* —.

II

The Court justifies the wondrous results in these cases by relying on different combinations of factors. *Abate* v. *Mundt* relies on the need for flexibility in local governmental arrangements, the interest in preserving the integrity of political subdivisions, and the longstanding tradition behind New York's practice in the latter respect. *Whitcomb* v. *Chavis* finds elementary probability theory too simplistic as a guide to resolution of what is essentially a practical question of political power; the opinion relies on the long history of multi-member districts in this country and the fear that "affirmance of the District Court would spawn endless litigation." *Ante,* at 31. *Gordon* v. *Lance* relies heavily on the "federal analogy" and the prevalence of similar anti-majoritarian elements in the constitutions of the several States.

To my mind the relevance of such considerations as the foregoing is undeniable and their cumulative effect is unanswerable. I can only marvel, therefore, that they were dismissed, singly and in combination, in a line of cases which began with *Gray* v. *Sanders,* 372 U. S. 368 (1963), and ended with *Hadley* v. *Junior College District,* 397 U. S. 50 (1970).

That line of cases can best be understood, I think, as reflections of deep *personal* commitments by some members of the Court to the principles of pure majoritarian democracy. This majoritarian strain and its nonconstitutional sources are most clearly revealed in *Gray* v. *Sanders,* 372 U. S. 368, 381 (1963), where my Brother DOUGLAS, speaking for the Court, said: "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote." If this philosophy of majoritarianism had been given its head, it would have led to different results in each of the cases decided today, for it is in the very nature of the principle that it regards majority-rule as an imperative of social organization, not subject to compromise in furtherance of merely political ends. It is a philosophy which ignores or overcomes the fact that the scheme of the Constitution is one not of majoritarian democracy, but of federal republics, with equality of representation a value subordinate to many others, as both the body of the Constitution and the Fourteenth Amendment itself show on their face. See generally *Baker* v. *Carr,* 369 U. S. 186, 297–324 (1962) (Frankfurter, J., dissenting).

III

If majoritarianism is to be rejected as a rule of decision, as the Court implicitly rejects it today, then an alternative principle must be supplied if this earlier line of cases just referred to is still to be regarded as good law. The reapportionment opinions of this Court provide little help. They speak in conclusory terms of "debasement" or "dilution" of the "voting power" or "representation" of citizens without explanation of what these concepts are. The answers are hardly apparent, for as the Court observes today in *Whitcomb* v. *Chavis:*

> "[a]s our system has it, one candidate wins, the others lose. Arguably the losing candidates' supporters are without representation since the men they voted for have been defeated; arguably they have been denied equal protection of the laws since they have no legislative voice of their own. . . . But we have not yet deemed it a denial of equal protection to deny legislative seats to losing candidates, even in those so-called 'safe' districts where the same party wins year after year." *Ante,* at 27.

A coherent and realistic notion of what is meant by "voting power" might have restrained some of the extreme lengths to which this Court has gone in pursuit of the will-o'-the-wisp of "one man, one vote."

An interesting illustration of the light which a not implausible definition of "voting power" can shed on reapportionment doctrine is provided by the theoretical model created by Professor Banzhaf, to which the Court refers in *Whitcomb* v. *Chavis, ante,* at 18–20.[2] This model uses as a measure of voting power the probability that a given voter will cast a tie-breaking ballot in an election. Two further assumptions are made: first, that the voting habits of all members of the electorate are alike; and second, that each voter is equally likely to vote for either candidate before him. On these assumptions, and taking the voting population in Marion County as roughly 300,000, it can be shown that the probability of an individual voter's casting a decisive vote in a given election is approximately .00146. This provides a standard to which "voting power" of residents in other districts may be compared. See generally Banzhaf, Multi-Member Electoral Districts—Do They Violate the "One Man, One Vote" Principle, 75 Yale L. J. 1309 (1966).

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[2] The Court, though stating that it does "not quarrel with plaintiffs' mathematics," nevertheless implies that it may be ignored because "the position remains a theoretical one . . . and does 'not take into account any political or other factors which might affect the actual voting power of the residents, which might include party affiliation, race, previous voting characteristics or any other factors which go into the entire political voting situation.'" *Ante,* at 19–20. Precisely the same criticism applies, with even greater force, to the "one man, one vote" opinions of this Court. The only relevant difference between the elementary arithmetic on which the Court

However, Professor Banzhaf's model also reveals that minor variations in assumptions can lead to major variations in results. For instance, if the temper of the electorate changes by one-half of one percent,[3] each individual's voting power is reduced by a factor of approximately 1,000,000. Or if a few of the 300,000 voters are committed—say 15,000 to candidate *A* and 10,000 to candidate *B*[4]—the probability of any individual's casting a tie-breaking vote is reduced by a factor on the rough order of 120,000,000,000,000,000,000. Obviously in comparison with the astronomical differences in voting power which can result from such minor variations in political characteristics, the effects of the 12% and 28% popula-

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relies and the elementary probability theory on which Professor Banzhaf relies is that calculations in the latter field cannot be done on one's fingers.

[3] More precisely, the result follows if the second of Professor Banzhaf's assumptions is altered so that the probability of each voter's selecting candidate *A* over candidate *B* is 50.5% rather than 50%.

[4] The text assumes that each of the remaining 275,000 voters is equally likely to vote for *A* or for *B*.

tion variations considered in *Abate* v. *Mundt* and in *Whitcomb* v. *Chavis* are *de minimis*, and even the extreme deviations from the norm presented in *Baker* v. *Carr*, 369 U. S. 186 (1962), and *Avery* v. *Midland County*, 390 U S. 474 (1968), pale into insignificance.[5]

It is not surprising therefore that the Court in *Whitcomb* declines to embrace the measure of voting power suggested by Professor Banzhaf. But it neither suggests an alternative nor considers the consequences of its inability to measure what it purports to be equalizing. See n. 2, *supra*. Instead it becomes enmeshed in the haze of slogans and numerology which for 10 years has obscured its vision in this field, and finally remands the case "for further proceedings consistent with [its] opinion." *Ante*, at 37. This inexplicit mandate is at least subject to the interpretation that the court below is to inquire into such matters as "the actual influence of Marion County's delegation in the Indiana legislature," *ante*, at 21, and the possibility of "recurring poor performance by Marion County's delegation with respect to Center Township ghetto," *ante*, at 29, with a view to determining whether "any legislative skirmish affecting the State of Indiana or Marion County in particular would have come out differently had Marion County been subdistricted and its delegation elected from single-member-districts." *Ante*, at 22. If there are less appropriate subjects for federal judicial inquiry, they do not come readily to mind. The suggestion implicit in the Court's opinion that appellees may ultimately prevail if they can make their record in these and other like respects should be recognized for what it is: a manifestation of frustration by a Court that has become trapped in the "political thicket" and is looking for the way out.

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[5] "There is something fascinating about science. One gets such wholesale returns of conjecture out of such a trifling investment of fact." M. Twain, Life on the Mississippi 109.

This case is nothing short of a complete vindication of Mr. Justice Frankfurter's warning 10 years ago "of the mathematical quagmire (apart from divers judicially inappropriate and elusive determinants) into which this Court today catapults the lower courts of the country." *Baker* v. *Carr,* 369 U. S. 186, 268 (1962) (dissenting opinion). With all respect, it also bears witness to the morass into which the Court has gotten itself by departing from sound constitutional principle in the electoral field. See the dissenting opinion of Mr. Justice Frankfurter in *Baker* v. *Carr, supra,* and the separate opinions of this writer in *Reynolds* v. *Sims,* 377 U. S. 533, 589 (1964), and in *Oregon* v. *Mitchell,* 400 U. S. 112, 152 (1970). Hopefully, the day will come when the Court will frankly recognize the error of its ways in ever having undertaken to restructure state electoral processes.

I would reverse the judgment below and remand the case to the District Court with directions to dismiss the complaint.

SUPREME COURT OF THE UNITED STATES

No. 92.—October Term, 1970

Edgar D. Whitcomb, Governor of the State of Indiana, Appellant, *v.* Patrick Chavis et al.	On Appeal From the United States District Court for the Southern District of Indiana.

[June 7, 1971]

Mr. Justice Douglas, with whom Mr. Justice Brennan and Mr. Justice Marshall concur, dissenting.

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The legislative apportionment statutes in Indiana which implemented that provision gave Marion County eight senators, all elected at large. The statutes also gave the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

> "A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a racial, ethnic, or other minority group, most of whom

> are of lower socio-economic status than the prevailing status in the metropolitan area and whose residence in the section is often the result of social, legal, economic restrictions or custom."

Applying the definition to the extensive evidence in the case, the District Court found there was an identifiable ghetto area within Center Township. The court then contrasted the residence of those elected to the state House and Senate from Marion County since 1960. There had been 21 elected senators; two came from Center Township, 11 from Washington Township. Of the 67 representatives, 12 came from Center Township and 28 from Washington Township.

The District Court concluded:

> "The inequity of representation by residence of legislators between Washington and Center Townships is apparent . . . . Washington Township, the upper middle-class and wealthy suburban area having 14.64% of the population of Marion County, was the residence of 52.27% of the senators and 41.79% of the representatives. Center Township, having 41.14% of the population (approximately three times as large), was the residence of 9.51% of the senators (less than one-fifth of Washington Township) and 17.91% of the representatives (approximately three-sevenths of Washington Township)."

The court found that the voting strength of the cognizable element within Center Township was severely minimized, that minimization occurred by virtue of the strong control which the political parties exert over the nomination process in Marion County, and that Black voters within Center Township are unable to be assured of the opportunity of voting for prospective legislators of their choice. The court further found that "[u]nder the evidence before the Court such invidious effects will continue so long as Marion County is apportioned into large senate and house multi-member districts."

I

Based on its findings the District Court held the then Indiana apportionment acts unconstitutional and enjoined their enforcement. The court then determined that to redistrict Marion County alone would leave constitutionally impermissible population variances between the newly created districts and the other districts in the State and therefore redistricting the entire State was necessary. In its redistricting plan the District Court divided well over half of the counties in the State despite Article 4, § 6 of the Indiana Constitution. Marion County itself was divided into seven separate senatorial districts and an eighth was created by taking part of Marion and parts of Johnson and Morgan Counties. The court mandated that the 1970 election be conducted in accordance with the plan it approved and the court retained jurisdiction for the purpose of passing on any future claims of unconstitutionality made by the plaintiffs against any future legislative apportionment plan promulgated. This Court stayed the District Court's order. 396 U. S. 1055.

This suit was commenced some 22 months before the 1970 election in ample time for a decision on the merits. The plaintiffs in fact won below but this Court stayed the order. Now the election has been held and a federal decennial census has been taken. Under the compulsion of the decree of the District Court the legislature has adopted single-member districts for the entire State. But absent a federal decree they would certainly follow the mandate of the Indiana Constitution.

As the Court says, the fact that the 1970 election is history does not affect underlying claim in this case. We have a finding of fact that an identifiable racial minority has its voting strength severely minimized by the operation of multi-member districts. We also have a finding that the invidious effects will continue so long as Marion County has multi-member districts. Under the order of the District Court (absent our stay) the 1965 apportionment statutes could not be used. The District Court would retain jurisdiction and no attempt by the state legislature to apply Article 4, § 6 of their constitution would be successful because under the conclusions of the District Court it is unconstitutional as applied to Marion County. See *Reynolds* v. *Sims,* 377 U. S. 533, 584. There is no chance that the Indiana Constitution can be amended in time to undo the harm. By its own provisions any amendment requires a majority vote in each house of two consecutive General Assemblies; it is then referred to the voters and ratified by majority vote. Art. 16, § 1.

The Indiana Constitution requires "an enumeration . . . of all male inhabitants over the age of twenty-one years" to be made every six years. Art. 4, § 4. Then at the next legislative session, the General Assembly is directed to reapportion the State according to the number of male inhabitants above the age of 21. Art. 4, § 5. These provisions fell into disuse and the last enumeration provided for was in 1921 and, prior to *Baker* v. *Carr,* 369 U. S. 186, the legislature had not been apportioned since that time. See *Matthews* v. *Handley,* 179 F. Supp. 470 (ND Ind. 1961); *Fruit* v. *Metropolitan School District,* 241 Ind. 621, 172 N. E. 2d 864. Indiana courts had no power to require reapportioning under the state constitution. *Parker* v. *State ex rel. Powell,* 133 Ind. 178, 32 N. E. 836.

In 1969 the legislature initially approved proposed constitutional changes to those two sections which will provide for using the federal decennial census for Indiana and apportioning the State immediately thereafter, such apportionment to remain unaltered until the next decennial census. S. J. Res. No. 26, Acts 1969, c. 464. The provision must still be approved by the 1971 General Assembly and a majority of the voters. See Art. 16, § 1, of the Indiana Constitution. At the time this case was argued under the Indiana Apportionment Act of 1965, c. 4, § 1, and c. 5, § 1, the 1960 Decennial Census was accepted as correct.

Nor does the fact that the state legislature has passed a reapportionment plan abolishing multi-member districts throughout the entire State moot this case. But for the decision below no such plan would have been forthcoming. The plan is in plain violation of the state constitution and in view of the fact that no Indiana Legislature has ever violated that provision of the state constitution before it is obvious that the impetus came from the outside.[1] The provision of the state constitution forbidding dividing a county for senatorial apportionment is unconstitutional under the Federal Constitution as applied to Marion County. See *Reynolds* v. *Sims,* 377 U. S. 533, 584. Mooting the case would accomplish nothing. If we were to moot it, the state courts would likely void the 1971 apportionment plan as violative of the state constitution and then the parties would be right back where they were at the beginning of this law suit. It is apparent this controversy remains alive and that there is no reason to wait two or more years in order to decide it in a case growing out of a state court determination on the constitutionality of single-member districts in Marion County, as would happen should we vacate the decree below and force the parties to another forum for another round of litigation on the same issue.

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[1] Wallace, Legislative Apportionment In Indiana, 42 Ind. L. J. 6, 30 (1966).

The constitutional provision which now requires multi-member senatorial districts has been in Indiana's constitution from the date of enactment—1851. And the ghetto voters' position as a class will not change. The findings of the District Court clearly state the invidious effects will last so long as multi-member districting lasts. The District Court found that "to redistrict Marion County alone, so as to provide districts meeting constitutional standards, would leave constitutionally impermissible population variances between the newly created districts in Marion County and other districts in the state." Accordingly the court redistricted the entire State.[2] The decision to redistrict the State and the finding of minimization of the ghetto voters' strength are intertwined. As the District Court stated, "the portions of the statutes relating to Marion County were found to be not severable from the full body of the statutes." There is no showing here that that finding is even partially erroneous let alone clearly erroneous. A decision to redistrict Marion County involves the entire State; each properly must be considered with the other.

II

The merits of the case go to the question reserved in *Fortson* v. *Dorsey,* 379 U. S. 433, 439, and in *Wells* v. *Rockefeller,* 394 U. S. 542, 544, whether a gerrymander can be "constitutionally impermissible." The question of the gerrymander[3] is the other half of *Reynolds* v.

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[2] The District Court also found independent of the new districts that there were impermissible population variances in the Indiana apportionment. The ratio between the largest and smallest Senate district was 1.327 to 1. For the House it was 1.279 to 1. Under the plan promulgated by the District Court these were reduced to 1.017 to 1 and 1.020 to 1 respectively.

[3] See Tyler & Wells, The New Gerrymander Threat, AFL–CIO American Federationist, Feb. 1971, p. 1.

Sims, 377 U. S. 533. Fair representation of voters in a legislative assembly—one man, one vote—would seem to require (1) substantial equality of population within each district and (2) the avoidance of district lines that weigh the power of one race more heavliy than another. The latter can be done—and is done—by astute drawing of district lines that makes the district either heavily Democratic or heavily Republican as the case may be. Lines may be drawn so as to make the voice of one racial group weak or strong, as the case may be.

The problem of the gerrymander is how to defeat or circumvent the sentiments of the community. The problem of the law is how to prevent it. As MR. JUSTICE HARLAN once said "A computer may grind out district lines which can totally frustrate the popular will on an overwhelming number of critical issues." *Wells* v. *Rockefeller,* 394 U. S., at 551 (dissenting). The easy device is the gerrymander. The District Court found that it operated in this case to dilute the vote of the blacks.

III

In *Gomillion* v. *Lightfoot,* 364 U. S. 339, we dealt with the problem of a State intentionally making a district smaller to exclude black voters. Here we have almost the converse problem. The State's districts surround the black voting area with white voters.

Gomillion, involving the turning of the City of Tuskegee from a geographical square 'to an uncouth twenty-eight-sided figure," 364 U. S., at 340, was only one of our cases which dealt with elevating the political interests of one identifiable group over those of another. Georgia's county unit system was similar, although race was not a factor. Under the Georgia system a farmer in a rural county could have up to 99 times the voting power of his urban-dwelling brother. See *Gray* v. *Sanders,* 372 U. S. 368. Here the districting plan operates to favor "upper-middle class and wealthy" suburbanites.

A showing of racial motivation is not necessary when dealing with multi-member districts. *Burns* v. *Richardson,* 384 U. S. 73, 88; *Fortson* v. *Dorsey,* 379 U. S. 433, 439. Although the old apportionment plan which is in full harmony with the State's 1851 constitution, may not be racially motivated, the test for multi-member districts is whether there are invidious effects.

That rule is but an application of a basic principle applied in *Hunter* v. *Erickson,* 393 U. S. 385. There a city passed a housing law which provided that before an ordinance regulating the sale or lease of realty on the basis of race could become effective it must be approved by a majority vote. Thus the protection of minority interests became much more difficult. We held that a State or a state agency could not in its voting scheme so disadvantage black interests.

Multi-member districts are not *per se* unconstitutional. *Fortson* v. *Dorsey,* 379 U. S. 433, 439. In that case we expressly reserved judgment on the question of whether a multi-member districting plan which operated "to minimize or cancel out the voting strength of racial or political elements of the voting population" could pass constitutional muster. 379 U. S., at 439.

In *Burns* v. *Richardson, supra,* we again considered the problems of multi-member districts. The doubts noted in *Fortson* v. *Dorsey* were resolved and we stated that assuming the requirements of *Reynolds* v. *Sims,* 377 U. S. 533 were satisfied, multi-member districts are unconstitutional "only if it can be shown that 'designedly or otherwise' . . . [such a district would operate] to minimize or cancel out the voting strength of racial or political elements of the voting population." 384 U. S., at 88. We went on to suggest how the burden of proof could be met.

> "It may be that this invidious effect can more easily be shown if, in contrast to the facts in *Fortson*, districts are large in relation to the total numbers of legislators, if districts are not appropriately subdistricted to assure distribution of legislators that are resident over the entire district, or if such districts characterize both houses of a bicameral legislature rather than one." *Ibid.*

These factors are all present in this case. Between the largest (Marion) and second largest (Lake) counties in the State, 26% of each house of the legislature is controlled. There is no subdistricting under the Indiana plan. Cf. *Dusch* v. *Davis*, 387 U. S. 112. And multi-member districts are used in both houses of the legislature.

In both *Fortson* and *Burns* we demanded that the invidious effects of multi-member districts appear from evidence in the record. Here that demand is satisfied by (1) the showing of an identifiable voting group living in Center Township, (2) the severe discrepancies of residency of elected members of the general assembly between Center and Washington Townships, cf. BRENNAN, J., dissenting in *Abate* v. *Mundt*, — U. S. —, (3) the finding of pervasive influence of the county organizations of the political parties, and (4) the finding that legislators from the county maintain "common, undifferentiated" positions on political issues.[4]

IV

Little time need be spent on the District Court's decision to redistrict the entire State. The court found that there were already impermissible population variances between districts under the current apportionment plan. The ratio between the largest and smallest senate district was 1.327 to 1. For the house it was 1.279 to 1. The court also found that the new Marion County districts would also have impermissible population variances when compared to existing districts.

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[4] The three-judge court "emphasized that the black plaintiffs were members of an identifiable interest group whose voting strength had been minimized by the multi-member districting scheme. They were not only unable to elect a legislator who was attuned to their interests, but were also saddled with lawmakers who reflected white suburban ideology and were controlled by political leaders." Solomon, *Chavis* v. *Whitcomb*, 24 Rutgers L. Rev. 521, 533 (1970).

On these facts the demands of our decisions required redistricting. As *Reynolds* v. *Sims* showed, the state constitution must give way to requirements of the Supremacy Clause when there is a conflict with the Federal Constitution. And finally the District Court's own plan was exemplary. The population ratio for the largest and smallest senate districts was 1.017 to 1 and for the house it was 1.020 to 1.

V

It is said that if we prevent racial gerrymandering today, we must prevent gerrymandering of any special interest group tomorrow, whether it be social, economic, or ideological. I do not agree. Our Constitution has a special thrust when it comes to voting; the Fifteenth Amendment says the right of citizens to vote shall not be "abridged" on account of "race, color, or previous condition of servitude."

Our cases since *Baker* v. *Carr* have never intimated that "one man, one vote" meant "one white man, one vote." Since "race" may not be gerrymandered, I think the Court emphasizes the irrelevant when it says that the effect on "the actual voting power" of the blacks should first be known. They may be all Democratic or all Republican; but once their identity is purposefully washed out of the system, the system, as I see it, has a constitutional defect. It is asking the impossible for us to demand that the blacks first show that the effect of the scheme was to discourage or prevent poor blacks from voting or joining such party as they chose. On this record, the voting rights of the blacks have been "abridged," as I read the Constitution.

The District Court has done an outstanding job, bringing insight to the problems. One can always fault a lower court by stating theoretical aspects of apportionment plans that may not have been considered. This District Court acted earnestly and boldly to correct a festering electoral system. I would not even vacate and remand so that it could revise its plan in accordance with the 1970 census figures. That court has retained jurisdiction of the cause and has sense enough to update its own plan. We can make the contribution of the District Court enormous and abiding by leaving it the initiative to carry out the mandate of *Reynolds* v. *Sims*.

I would affirm the judgment.